11–19–04 Friday
Vol. 69 No. 223 Nov. 19, 2004

Pages 67633–67804

Federal Register

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

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

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

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

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

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

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

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

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

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

Printed on recycled paper.

Contents

Federal Register

Vol. 69, No. 223

Friday, November 19, 2004

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Appalachian, Florida, and Southeast, 67670–67680

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Alcoholic beverages:
Wine; materials authorized for treatment of wine and juice; processes authorized for treatment of wine, juice, and distilling material, 67639–67645

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Method and apparatus for making body heating and cooling garments, 67711

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Surveys, determinations, etc.:
Service industries; annual, 67699

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Alcohol-impaired driving; community-based interventions, 67738–67744

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67744–67745

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Various States, 67698–67699

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 67697–67698

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Philippines, 67711

Customs and Border Protection Bureau
NOTICES
Customs broker and national permits; user fees, 67749

Defense Department
See Army Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Aquino, Nilvio R., M.D., 67760–67761

Election Assistance Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67712

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67761–67762
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 67762–67763

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN, 67713

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Consumer products; energy conservation program:
Energy conservation standards and test procedures—
Distribution transformers; supplemental technical support document appendix availability and labeling correction, 67680–67681

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Greene County, NY; Athens Navigation Project, 67711–67712

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 67645–67647

Solid waste:
Land disposal restrictions—
Chemical Waste Management, Chemical Services, LLC; site-specific treatment standard variance for selenium waste, 67647–67654
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 67694
Solid waste:
Land disposal restrictions—
Chemical Waste Management, Chemical Services, LLC; site-specific treatment standard variance for selenium waste, 67695–67696
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 67730
Weekly receipts, 67729–67730
Pesticide, food, and feed additive petitions:
Syngenta Crop Protection, Inc., 67731–67735
Reports and guidance documents; availability, etc.:
World Trade Center; indoor environment impacts; sampling program, 67735–67736

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Thielert Aircraft Engines modified Cessna Model 172 series airplanes, 67636–67638
Class E airspace, 67638–67639
NOTICES
Passenger facility charges; applications, etc.:
Fort Collins-Loveland Municipal Airport, CO, 67772
Hartsfield-Jackson Atlanta International Airport, GA, 67773

Federal Communications Commission
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 67736–67737

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67749–67750
Disaster and emergency areas:
New York, 67750–67751
Tennessee, 67751

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 67715–67718
Environmental statements; notice of intent:
AES Ocean Express, L.L.C., 67718–67723
Caledonia Energy Partners, L.L.C., 67723–67724
Natural Gas Pipeline Co. of America, 67724–67726
Hydroelectric applications, 67726–67727
Reports and guidance documents; availability, etc.:
Pipeline assessment costs accounting release, 67727–67729
Applications, hearings, determinations, etc.:
Nicor Gas, 67713
Paiute Pipeline Co., 67713–67714
Trunkline Gas Co., LLC, 67714–67715

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Clackamas County, OR, 67773–67774

Federal Reserve System
RULES
Extensions of credit by Federal Reserve Banks (Regulation A):
Primary and secondary credit—
Rates; increase approval, 67635–67636
NOTICES
Banks and bank holding companies:
Change in bank control, 67737
Permissible nonbanking activities, 67737

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Continuous Marketing Applications: Pilot 2 Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA, 67745–67746
Medicare Prescription Drug, Improvement, and Modernization Act of 2003—
Listed drugs, 30-month stays, and approval of ANDAs and 505(b)(2) applications under Hatch-Waxman, as amended; questions and answers; correction, 67746–67747

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Wisconsin, 67699–67700

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Eastern Arizona Counties, 67697

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Scientific misconduct findings; administrative actions:
Sultan, Ali, M.D., Ph.D., 67737

Homeland Security Department
See Customs and Border Protection Bureau
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 67753

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Morey, Gerald, 67700–67701
Meetings:
Regulations and Procedures Technical Advisory Committee, 67701

Transportation and Related Equipment Technical Advisory Committee, 67701

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Section 179 elections; property cost; cross-reference Public hearing canceled, 67681
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67775–67776
Meetings:
Electronic Tax Administration Advisory Committee, 67776

International Trade Administration
NOTICES
Antidumping:
Silicon metal from—
Brazil, 67702–67703
Antidumping and countervailing duties:
Administrative review requests, 67701–67702
Export trade certificates of review, 67703
North American Free Trade Agreement (NAFTA); binational panel reviews:
Alloy magnesium from—
Canada, 67703

International Trade Commission
NOTICES
Import investigations:
Agricultural tractors, lawn tractors, riding lawnmowers, and components, 67757
Electronic devices, including power adapters, converters, external batteries, and detachable tips used to power and/or charge mobile electronic products, 67758
Nand flash memory circuits and products containing same, 67758–67759
Natural bristle paint brushes from—
China, 67759
Meetings; Sunshine Act, 67759

Justice Department
See Drug Enforcement Administration
NOTICES
Meetings:
Violence Against Women National Advisory Committee, 67759–67760

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Central Montana, 67753
Survey plat filings:
New Mexico, 67753–67754

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 67765

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mining—
Air quality, chemical substances, and respiratory protection standards; withdrawn, 67681–67692
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67763–67764

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Councils, 67765

National Archives and Records Administration
PROPOSED RULES
Records management:
Media neutral records schedules, 67692–67694

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Motor vehicle brake fluids, 67654–67660
Rear impact guard labels, 67660–67663
Rear impact protection; road construction controlled horizontal discharge semitrailers; exclusion from standard, 67663–67668
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67774

National Institute of Standards and Technology
NOTICES
National Fire Codes:
Fire safety codes and standards, 67703–67705
Technical committee reports, 67705–67706

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 67747–67748
Meetings:
National Institute of Child Health and Human Development, 67748–67749
National Institute of Diabetes and Digestive and Kidney Diseases, 67748
Scientific Review Center, 67749

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 67668–67669
Northeastern United States fisheries—
Northeast multispecies, 67779–67804
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
La Jolla, CA; wall replacement and bluff improvement projects; harbor seals, 67706–67711

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 67754–67757

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 67765–67766

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003; assignment of functions (EO 13361), 67633–67634

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67766–67767

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 67767
Self-regulatory organizations; proposed rule changes:
Fixed Income Clearing Corp., 67767–67768
International Securities Exchange LLC, 67768–67770
Pacific Exchange, Inc., 67770–67772

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 67775

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

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

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Immigration:
Direct Mail Program—
Adjustment of status application, employment authorization, and travel authorization; filing address, 67751–67752

Veterans Affairs Department
NOTICES
Meetings:
Homeless Veterans Advisory Committee, 67777
Veterans Health Administration Resident Education Advisory Committee, 67777–67778
Reports and guidance documents; availability, etc.:
Women Veterans Advisory Committee; annual report, 67778

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 67779–67804

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:
12163 (Amended by EO 13361).....67633
13361.....67633

7 CFR

Proposed Rules:
1005.....67670
1006.....67670
1007.....67670

10 CFR

Proposed Rules:
430.....67680

12 CFR
201.....67635

14 CFR
23.....67636
71.....67638

26 CFR

Proposed Rules:
1.....67681

27 CFR
24.....67639

30 CFR

Proposed Rules:
56.....67681
57.....67681
58.....67681
70.....67681
71.....67681
72.....67681
75.....67681
90.....67681

36 CFR

Proposed Rules:
1228.....67692

40 CFR
52.....67645
268.....67647

Proposed Rules:
52.....67694
268.....67695

49 CFR
571 (3 documents) 67654, 67660, 67663

50 CFR
648.....67780
679.....67668

Federal Register
Vol. 69, No. 223
Friday, November 19, 2004

Presidential Documents

Title 3—

The President

Executive Order 13361 of November 16, 2004

Assignment of Functions Under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Executive Order 12163 of September 29, 1979, as amended, is further amended as follows:

(a) in subsection 1–100(a), by striking the period at the end of paragraph (15), by inserting a semicolon at the end of paragraph (15), and by adding at the end thereof the following new paragraph:

''(16) the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25)(the ''HIV/AIDS Act''), as amended, and amendments made by the HIV/AIDS Act, which the Secretary shall perform, in the case of section 304, after consultation with the Secretary of Health and Human Services.'';

(b) in section 1–701, by inserting, after subsection (g), the following new subsections:

''(h) Those functions conferred by section 1(f)(1) and section 1(f)(2)(B)(ii)(VII) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a).

''(i) Those functions conferred by section 202(d)(4)(C)(i) and (ii) of the HIV/AIDS Act, as amended.'';

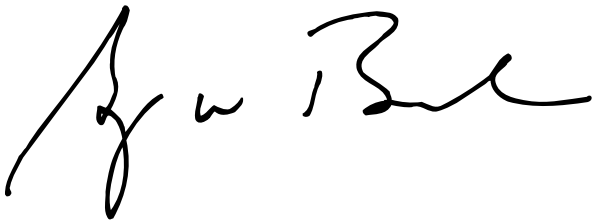
(c) by adding at the end thereof the following new section:

''1–906. *Implementation.* In carrying out this order, officers of the United States shall ensure that all actions taken by them are consistent with the President's constitutional authority to: (a) conduct the foreign affairs of the United States; (b) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; (c) recommend for congressional consideration such measures as the President may judge necessary and expedient; and (d) supervise the unitary executive branch.''.

Sec. 2. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

Sec. 3. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity

by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
November 16, 2004.

[FR Doc. 04–25866
Filed 10–18–04; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 69, No. 223
Friday, November 19, 2004

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective November 19, 2004. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202) 452–3259; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 2.75 percent to 3.00 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 3.25 percent to 3.50 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 1.75 percent to 2.00 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Output appears to be growing at a moderate pace despite the rise in energy prices, and labor market conditions have improved. Inflation and longer-term inflation expectations remain well contained.
>
> The Committee perceives the upside and downside risks to the attainment of both sustainable growth and price stability for the next few quarters to be roughly equal. With underlying inflation expected to be relatively low, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	3.00	Nov. 10, 2004.
New York	3.00	Nov. 10, 2004.
Philadelphia	3.00	Nov. 10, 2004.
Cleveland	3.00	Nov. 10, 2004.
Richmond	3.00	Nov. 10, 2004.
Atlanta	3.00	Nov. 10, 2004.
Chicago	3.00	Nov. 10, 2004.
St. Louis	3.00	Nov. 12, 2004.
Minneapolis	3.00	Nov. 10, 2004.
Kansas City	3.00	Nov. 10, 2004.
Dallas	3.00	Nov. 12, 2004.
San Francisco	3.00	Nov. 10, 2004.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Boston	3.50	Nov. 10, 2004.
New York	3.50	Nov. 10, 2004.
Philadelphia	3.50	Nov. 10, 2004.
Cleveland	3.50	Nov. 10, 2004.
Richmond	3.50	Nov. 10, 2004.
Atlanta	3.50	Nov. 10, 2004.
Chicago	3.50	Nov. 10, 2004.
St. Louis	3.50	Nov. 12, 2004.
Minneapolis	3.50	Nov. 10, 2004.
Kansas City	3.50	Nov. 10, 2004.
Dallas	3.50	Nov. 12, 2004.
San Francisco	3.50	Nov. 10, 2004.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 15, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–25658 Filed 11–18–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE213; Special Conditions No. 23–152–SC]

Special Conditions: Thielert Aircraft Engines; Cessna Model 172 K, L, M, N, P, R, and S Series Airplanes; Installation of Thielert TAE–125–01 Aircraft Diesel Engine for Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Thielert Aircraft Engines, GmbH, Lichtenstein, Germany for a supplemental type certificate for the Cessna Model 172 series airplanes. The supplemental type certificate for these airplanes will have a novel or unusual design feature associated with the installation of an aircraft diesel engine that uses an electronic engine control system instead of a mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is: November 1, 2004. Comments must be received on or before December 20, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE213, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE213. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Pete Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4135, fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE213.'' The postcard will be date stamped and returned to the commenter.

Background

On February 11, 2002, Thielert Aircraft Engines applied for a supplemental type certificate for the Cessna Model 172 series airplanes. The supplemental type certificate will allow Thielert Aircraft Engines to install a Thielert Aircraft engine (TAE 125–01 aircraft diesel engine (ADE)) that is equipped with an electronic engine control system with full authority capability in these airplanes.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.101, Thielert Aircraft Engines must show that the Cessna Model 172 meets the applicable provisions of the original certification basis of the Cessna Model 172, as listed on Type Certificate No. 3A12, issued on November 4, 1955; exemptions, if any; and the special conditions adopted by this rulemaking action. The Cessna Model 172 was originally certified under part 3 of the Civil Air Regulations.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 3; 14 CFR, part 23) do not contain adequate or appropriate safety standards for the Cessna 172 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the certification basis for the supplemental type certification basis in accordance with § 21.101. Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other models that are listed on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply under the provisions of § 21.101.

Novel or Unusual Design Features

The Thielert Aircraft Engines modified Cessna Model 172 will incorporate a novel or unusual design feature, an engine that includes an electronic control system with full authority digital engine control (FADEC) capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Thielert

Aircraft Engines modified Cessna Model 172 will perform critical functions, provisions for protection from the effects of HIRF should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, the Joint Aviation Authorities (JAA), and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a FADEC is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR, part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Thielert Aircraft Engines modified Cessna Model 172 airplane to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–49.

Applicability

As discussed above, these special conditions are applicable to the Thielert Aircraft Engines modified Cessna Model 172. Should Thielert Aircraft Engines apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate as the Thielert Aircraft Engines modified Cessna Model 172 to incorporate the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, the Cessna Model 172 K, L, M, N, P, R, and S series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register.** However the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Thielert Aircraft Engines modified Cessna Model 172 airplanes.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Field strength (volts per meter)

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

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.* The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–49. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects

addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri, on November 1, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25698 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19576; Airspace Docket No. 04–ACE–66]

Modification of Class E Airspace; Boone, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Boone, IA. A review of controlled airspace at Boone, IA revealed it does not comply with criteria for 700 feet above ground level (AGL) airspace required to protect aircraft executing Standard Instrument Approach Procedures (SIAPs) to Boone Municipal Airport. The review also identified noncompliance with criteria for diverse departures from the airport and other discrepancies in the legal description of airspace area.

The intended effect of this rule is provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Boone Municipal Airport. It also corrects discrepancies in the legal description of Boone, IA Class E airspace area and brings the airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, March 17, 2005.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19576/Airspace Docket No. 04–ACE–66, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Boone, IA. An examination of controlled airspace for Boone Municipal Airport revealed it does not comply with FAA Order 7400.2E, Procedures for Handling Airspace Matters, and FAA Order 8260.19C, Flight Procedures and Airspace, criteria for 700 feet AGL airspace required to protect aircraft executing SIAPs. The review also identified noncompliance with FAA Order 7400.2E criteria for diverse departures from the airport and other discrepancies in the legal description of the airspace area.

This amendment modifies the airspace area from a 6.6-mile radius to an 6.5-mile radius of Boone Municipal Airport, adds northeast and southeast extensions to the airspace area, modifies the northwest extension and brings the legal description of the Boone, IA Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19576/Airspace Docket No. 04–ACE–66.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant

rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE IAE5 Boone, IA

Boone Municipal Airport, IA
(Lat. 42°02′58″ N., long. 93°50′51″ W.)
Boone NDB
(Lat. 42°03′16″ N., long. 93°51′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boone Municipal Airport; and within 7 miles north and 3 miles south of the 048° bearing from the Boone NDB extending from the 6.5-mile radius of the airport to 10 miles northeast of the NDB; and within 2.5 miles each side of the 143° bearing from the NDB extending from the 6.5-mile radius of the airport to 7 miles southeast of the NDB; and within 2.5 miles each side of the 333° bearing from the NDB extending from the 6.5-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on November 4, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–25699 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 24

[T.D. TTB–17]

RIN 1513–AA96

Materials and Processes Authorized for the Treatment of Wine and Juice (2004R–517P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Temporary rule; solicitation of comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is revising its list of materials authorized for the treatment of wine and juice, and its list of processes authorized for the treatment of wine, juice, and distilling material. Specifically, we are adding new material and process listings, and amending the limitations for some existing listings pertaining to wine and juice. We are seeking comments from all interested parties on our view that the materials and processes covered by these changes are consistent with good commercial practice in the production, cellar treatment, or finishing of juice or standard wine.

DATES: Temporary rule effective November 19, 2004. Comments must be received on or before January 18, 2005.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: T.D. TTB–17, P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail);
- *http://www.ttb.gov/alcohol/rules/index.htm* (an online comment form is posted with this notice on our Web site); or
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of any comments we receive about this temporary rule by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the interim rule and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, Virginia 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background

Section 5382 of the Internal Revenue Code of 1986 (26 U.S.C. 5382) provides that proper cellar treatment of natural wine constitutes those practices and procedures that produce a finished product acceptable in good commercial practice. Section 5382 also authorizes the Secretary of the Treasury to prescribe, by regulation, limitations on the use of methods and materials for clarifying, stabilizing, preserving, fermenting, and otherwise correcting wine and juice.

The regulations administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) include, in 27 CFR part 24, provisions that implement these statutory requirements. Section 24.246 (27 CFR 24.246) includes a table that lists materials authorized for the treatment of wine and juice; § 24.247 (27 CFR 24.247) includes a table that lists materials authorized for the treatment of distilling material; and § 24.248 (27 CFR 24.248) includes a table that lists processes authorized for the treatment of wine, juice, and distilling materials.

Industry members wishing to experiment with, or commercially use, a treating material or process not specifically authorized in part 24 may file an application with TTB requesting authorization to use the new material or process. Standards regarding the experimental use of a new material or process are set forth in § 24.249 (27 CFR 24.249). The provisions covering applications for commercial use of a new material or process are contained in § 24.250 (27 CFR 24.250). Applications for commercial use must show that the proposed material or process is a cellar treatment consistent with good commercial practice. In general, good commercial practices include those practices that address the reasonable technological or practical need to enhance the keeping, stability, or other qualities of the wine and that achieve the winemaker's desired effect, without creating an erroneous impression about the wine's character and composition.

Over the past few years, TTB has received and approved applications for experimental or commercial use of the wine and juice treating materials and processes discussed below. We believe we have accumulated enough analytical data or other information to add them to the list of materials and processes for

wine and juice in §§ 24.246 and 24.248. Since we have already administratively approved the use of these materials and processes for some industry members for bottling and sale of wine under § 24.249(e), or for commercial use under § 24.250, we believe it is appropriate to adopt these additions to the lists as a temporary rule. In this way, all domestic winemakers will be able to use these treatments in the production of standard wine, pending final regulatory action, without first having to file an application under § 24.249 or § 24.250. At the same time, we are soliciting comments from all interested persons on our position that, based on the information set forth below, the use of each of these materials or processes is consistent with good commercial practice.

After we analyze any comments received in response to this notice, we will issue a final rule. Unless we receive evidence contradicting our stated position, we will adopt the temporary additions to the lists in the final rule. On the other hand, if we receive comments that persuade us that the use of a particular material or process is not consistent with good commercial practice, we will remove it from the appropriate list in our final rule. In such a case, all letters approving the experimental or commercial use of the material or process will be superseded as a result and will be rescinded by operation of law on the effective date of the final rule. Wines produced using such materials or processes that are rescinded based upon this rulemaking may nevertheless be labeled as if the materials or processes were authorized, provided they were produced prior to the date of supercession.

Wine and Juice Treating Materials

Acetaldehyde

An industry member applied to use acetaldehyde in grape juice to stabilize color in red grape concentrate. Acetaldehyde is a natural byproduct of yeast metabolism. A normal component of wine and other fermented products, it occurs naturally in California table wines at levels between 32 and 91 mg/L. The Food and Drug Administration (FDA) regulations at 21 CFR 182.60 state that acetaldehyde, when used as a synthetic flavoring substance and adjuvant, is generally recognized as safe (GRAS) with no established regulatory limit other than good manufacturing practice.

Acetaldehyde reacts with grape pigments (anthocyanins) and catechins (proanthocyanidins) to form a more stable color. According to the industry member, wines containing color-stabilized concentrate have an extended shelf life compared to wines containing standard concentrate. The industry member stated that any residual acetaldehyde is removed during the concentration process through the use of evaporators so that the finished concentrate will have no detectable level of acetaldehyde.

The industry member submitted to the TTB Laboratory two 750-milliliter samples of wine, one containing the treated grape concentrate (comprising 1% of the total volume of the sample) and one (the base) without the concentrate. The Laboratory found that the wine containing the concentrate was a darker, more opaque red than the base. The amount of acetaldehyde was slightly lower in the sample with the concentrate, but in other instrumental analyses the two samples were similar.

Consequently, TTB approved the commercial use of acetaldehyde in juice at a level of 300 mg/L to stabilize color in red grape concentrate. TTB gave this approval pending adoption of acetaldehyde as a treating material through the rulemaking process.

TTB is amending the list in § 24.246 to allow the use of acetaldehyde in juice prior to concentration at the rate of 300 mg/L, provided that no residual acetaldehyde remains in the finished concentrate.

Calcium Pantothenate

An industry member applied to use calcium pantothenate as a yeast nutrient in the production of apple wine. Calcium pantothenate is a salt of pantothenic acid, one of the vitamins of the B complex. The FDA regulations at 21 CFR 184.1212 state that calcium pantothenate is GRAS and may be used as a direct human food ingredient at a level consistent with current good commercial practice. Along with its application, the industry member submitted a material safety data sheet from the manufacturer and an excerpt from the Merck Index describing calcium pantothenate's chemical composition.

TTB approved the industry member's request to use calcium pantothenate for the production of apple wine at the rate of 0.1 lb. per 25,000 gallons of juice. TTB gave this approval pending final rulemaking action on the use of calcium pantothenate. This temporary rule document adds this material to the list in § 24.246.

Carbohydrase (Pectinase, Cellulase, Hemicellulse) Enzyme Preparation

TTB has approved several requests from wineries to use a mixed carbohydrase (pectinase, cellulase, hemicellulse) enzyme preparation derived from a nonpathogenic and nontoxigenic strain of *Aspergilius aculeatus* to facilitate the separation of juice from the fruit. According to technical information supplied by the enzyme's manufacturer, it disintegrates fruit cell walls, resulting in a quicker and more complete release of juice. A supplier of the enzyme stated that it lowers viscosity, improves clarification and filterability, and maximizes yield. The supplier also stated that it allows for more complete color extraction in red grape juice.

The FDA accepted a GRAS affirmation petition for this enzyme preparation from the manufacturer in 1985. In a December 19, 1996, letter regarding the status of the GRAS affirmation petition, the FDA stated that it had no information indicating that the enzyme preparation is not GRAS. Based on the above information, TTB is adding this mixed carbohydrase enzyme preparation derived from *Aspergilius aculeatus* to the list of authorized enzymatic activities found in § 24.246 authorized materials table.

Cellulase Enzyme Preparation

An industry member applied to use a cellulase enzyme preparation derived from *Tricoderma longibrachiatu* to facilitate wine clarification and filtering. The enzyme, cellulase, catalyzes the endohydrolysis of 1, 4-beta-glycosidic linkages in cellulose. According to the technical data sheet issued by the enzyme's manufacturer, the preparation is best suited to treat difficult-to-filter wines, such as those produced from Botrytis-infected grapes. The FDA regulations at 21 CFR 184.1250 state that cellulase enzyme preparations derived from *Trichoderma longibrachiatu* are GRAS for use as a direct human food ingredient and may be used in amounts not exceeding current good manufacturing practice.

TTB approved the industry member's request to use this enzyme preparation at the rate of 1 to 3 grams per hectoliter (g/hl), the usage rate recommended by the manufacturer. TTB gave this approval pending final rulemaking action on the use of this material.

We are amending the list of authorized enzymatic activities in the § 24.246 authorized materials table by adding the use of this cellulase enzyme preparation, at a rate not to exceed 3 g/hl, to facilitate wine clarification and filtering.

Copper Sulfate

Copper sulfate is currently listed in § 24.246 for use in removing hydrogen

sulfide and other mercaptans from wine. These chemical compounds can cause off odors in wine that are often compared to those of rotten egg and skunk. The quantity of added copper sulfate (calculated as copper) may not exceed 0.5 part copper per million parts of wine (0.5 mg/L), with the residual level of copper not to exceed 0.5 part per million (0.5 mg/L). This residual level was established by T.D. ATF–350 (*See* 58 FR 52231, October 7, 1993), which cited studies showing that wine treated with copper sulfate is stable with residual copper levels at 0.5 part per million or less.

A number of wineries applied to TTB to use copper sulfate at a rate of 6 parts per million for specific vintages due to rainy harvest conditions that required them to spray elevated levels of sulfur on their grapes to prevent mold and mildew. These wineries stated that the residual sulfur on the grapes hindered fermentation and caused off odors, problems they were sometimes unable to correct with the approved level of copper sulfate. TTB approved these applications to use up to 6 parts per million for the vintages requested, provided that the residual level of copper sulfate in the wine did not exceed 0.5 part per million. Samples of wine treated with this higher level of copper sulfate were submitted to the TTB Laboratory and found to have residual copper levels below 0.5 part per million.

New technologies developed in recent years enable winemakers to more easily remove added copper from wine. The use of the metal reducing matrix sheet discussed below is an example of one such new technology. Because winemakers occasionally need to use a higher level of copper sulfate, and because new technologies allow winemakers to more readily remove this added copper, TTB is revising the existing listing in § 24.246 to raise the quantity of copper sulfate allowed to 6 parts per million, with the residual level remaining 0.5 part per million.

Lysozyme

TTB has approved several requests from wineries under § 24.249 to use lysozyme, an enzyme derived from egg white, for the purpose of limiting malolactic bacterial growth during wine fermentation. Such growth, if left unchecked, can adversely affect a wine's taste and can cause stuck or sluggish fermentation. Lysozyme attacks the cell walls of gram-positive bacteria, such as *Lactobacillus, Pediococcus,* and *Leuconostoc,* causing them to degrade. This use of lysozyme can greatly reduce the need for sulfur dioxide, which poses a health hazard to sulfite-sensitive individuals. The FDA regulations at 21 CFR 184.1550 state that egg white lysozyme is GRAS when used in the production of cheese.

A number of wineries had the results of their initial experimental trials with lysozyme analyzed by independent laboratories, including Oregon State University, which has extensively researched the use of lysozyme in wine production. The wineries submitted the resulting analytical and sensory data, which included data on the shelf life of the treated wine, to the Bureau of Alcohol, Tobacco and Firearms (ATF), TTB's predecessor agency. The wineries were generally pleased with the results of these trials and analyses, which found that lysozyme inhibited the growth of malolactic bacteria without causing negative sensory impact on the wine. The most effective usage level ranged from 250 mg/L to 500 mg/L.

In 1993, ATF requested an advisory opinion from the FDA regarding the safety of using lysozyme in wine to inhibit the growth of malolactic bacteria. The Director of the FDA's Office of Premarket Approval at the Center for Food Safety and Applied Nutrition responded by letter dated December 15, 1993. The Director stated that the FDA was ''currently unaware of any safety or health concerns for the general population with regard to the use of lysozyme in wine. Essentially, the use in question consists of adding a chemically unmodified major protein component (lysozyme) of one common food (eggs) to another common food (wine).''

Based on the above information, TTB is adding lysozyme to the list of authorized enzymatic activities in the § 24.246 authorized materials table for the purpose of limiting malolactic bacterial growth during wine fermentation. The approved usage rate may not exceed 500 mg/L.

Milk Products

Pasteurized whole or skim milk is currently listed in § 24.246 as authorized for the fining of white grape wine or sherry. The amount used may not exceed 2.0 liters of pasteurized milk per 1,000 liters of white wine or sherry (0.2 percent by volume).

TTB has approved applications from a few wineries to use milk and half-and-half at the approved usage rate of 0.2% by volume for the fining of red wine. One winery submitted before and after samples of the treated wine to the TTB Laboratory for analysis. The Laboratory conducted chemical and organoleptic analyses, which found that the milk treatment improved the taste of the wine without altering its basic characteristics.

In addition, a few wineries have applied to use milk and half-and-half to remove trichloroanisole (TCA), which causes off flavors, from wine. Laboratory data submitted by these wineries showed that milk and half-and-half were effective at removing TCA taint without altering the phenolic profile of the treated wine. Half-and-half was found to be particularly effective at removing the TCA due to its higher fat content. The level of milk product used ranged from 0.2% to 10% by volume. The wineries removed residual milk from the wine through conventional filtering methods. One winery submitted to the TTB Laboratory samples of treated wine, along with a control sample. Analytical and organoleptic tests performed by the Laboratory found that the treatment did not affect the vinous character of the wine.

Based on the above, TTB believes that § 24.246 should provide for the use of milk and half-and-half to fine all grape wine rather than only white wine and sherry. TTB also believes the present rate of usage (the milk product may not exceed 0.2% by volume of the wine) should remain unchanged. Similarly, § 24.246 should provide for the use of milk and half-and-half to remove off flavors from wine. TTB believes that wineries should have the option of using milk products to remove all off flavors from wine, not just those caused by TCA taint. The amount of milk or half-and-half used for this purpose should not exceed 10 liters per 1,000 liters of wine (1% of the volume of the wine). To effect these changes, we have replaced the heading ''milk (pasteurized whole or skim)'' with the heading ''milk products (pasteurized whole, skim, or half-and-half)'' in the § 24.246 authorized materials table.

Silica Gel (Colloidal Silicon Dioxide)

Silica gel (colloidal silicon dioxide) is currently approved in § 24.246 to clarify wine. Its use may not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1,000 gallons of wine (2.4 g/L), and the silicon dioxide must be completely removed by filtration. The FDA regulations at 21 CFR 172.480 permit the use of silicon dioxide as a food additive.

An industry member applied to have the current authorization extended to the clarification of juice. TTB approved this request to use silica gel on juice, subject to the current limitations of § 24.246, and subject to final rulemaking action. The existing listing for silica gel

is revised in this document to reflect this approval.

Wine Treating Processes

Electrodialysis

TTB has received and approved numerous requests from wineries to experiment with the procedure known as electrodialysis to remove excess tartrates from wine. Electrodialysis is a process by which certain ions, namely potassium, calcium, and tartrate ions, are extracted from wine by applying an electric field across specialized charged membranes.

As described by the supplier of the electrodialysis apparatus, the process consists of moving bulk wine past two membranes, one on either side of the wine. One membrane is selectively permeable to tartrate salts and the other is selectively permeable to calcium and potassium salts. As the wine passes between the two membranes, a water-based conductant is passed on the other side of both membranes. As both liquids flow through the apparatus, a weak electrical current is introduced, which causes the tartrate salts to migrate towards the positively charged membrane and the potassium and calcium salts to migrate toward the negatively charged membrane. As the tartrate, calcium, and potassium salts pass through the membranes, they enter the conductant stream and are carried out of the apparatus and discarded. The treated wine is then collected for bottling.

As part of the experimentation process described above, the wineries in question submitted before and after samples to the TTB Laboratory for analysis. The Laboratory analyzed the treated and untreated wines and found that the analytical profile of the treated wine was consistent with that of the untreated wine.

Based on the above, TTB is adding electrodialysis to the list of approved processes in § 24.248.

Metal/Sulfide Reducing Matrix Sheets

TTB has approved several applications from wineries to use two types of matrix filter sheets. One removes metals such as copper and iron from wine, while the other removes sulfides.

Both types of sheets contain the active ingredient Polyvinylimadazole (PVI), a terpolymer related to polyvinylpolypyrrolidone (PVPP), which is listed as an approved material in § 24.246. The PVI is immobilized in a cellulose matrix sheet and constitutes, at most, 40 percent of the weight of the sheet. Wine is passed through these sheets at a controlled flow rate using conventional filtering methods.

In the metal reducing sheet, metals are absorbed by the PVI and are thus removed from the wine. In the sulfide reducing sheet, sulfides in the wine bind to copper sites attached to the PVI. According to the manufacturer of the matrix sheets, the PVI and copper stay immobilized in the matrix and are directly not added to the wine, although the manufacturer calculates the possible migration of PVI into the wine to be less than 0.2 parts per billion.

The manufacturer of the matrix sheets filed a Food Contact Substance Notification with the FDA for the use of PVI as a component of matrix filter sheets used to remove metals and sulfides in alcoholic beverages. The FDA accepted this as an effective notification by a letter dated July 10, 2001, with the qualification that the PVI may constitute a maximum level of 40 percent by weight of the matrix sheet.

A number of the wineries seeking approval from TTB also submitted to the TTB Laboratory before and after samples of wines processed with the metal and sulfide reducing matrix sheets. In each case, TTB's analytical and organoleptic testing found that this treatment did not adversely affect the character and analytical profile of the wine.

Based on the above, TTB is amending § 24.248 to permit the use of metal and sulfide reducing matrix sheets in the treatment of wine.

Nanofiltration

TTB received a petition from an industry member to amend the regulations to allow the use of nanofiltration in combination with ion exchange to remove the volatile acidity (VA) from bulk wine. Although ion exchange is already widely used in the wine industry and is listed in § 24.248, the petitioner is requesting that we consider its use in connection with nanofiltration, which is not listed in § 24.248. We have also received and approved several requests from wineries for permission to use this process on an experimental basis.

The petitioner states that nanofiltration is a process by which wine is drawn into a storage tank where it is pressurized and piped through a mechanical sub-micron filtration process using nanotechnology. During the nanofiltration process, the wine is divided into two separate streams. One stream consists of the larger molecular weight compounds, such as flavors, and the second stream consists of the smaller molecular weight compounds, such as alcohol, water, and acetic acid. The second stream is passed through an ion exchange column, which selectively removes the acetic acid and allows the alcohol and water molecules to pass through. Upon exiting the ion exchange column, the second stream is re-combined with the first stream. The petitioner states that the membrane used in nanofiltration has a molecular weight cut-off of 100 Daltons at a pressure of 250 psi and a temperature of 60 degrees Fahrenheit.

As part of the experimentation approval process, the wineries submitted before and after samples to the TTB Laboratory for analysis. Our Laboratory analyzed the treated and untreated wines and found that the levels of volatile acids were indeed reduced without otherwise adversely affecting the wine.

Based on the above, TTB is adding nanofiltration to the list of approved processes in § 24.248.

Osmotic Transport

TTB has approved several requests from wineries to use osmotic transport in the production of reduced alcohol wines. Osmotic transport is also known as isothermal transport, isothermal membrane distillation, or osmotic distillation.

Osmotic transport is a membrane transport process that involves two liquids, typically water solutions, which have different water vapor pressures. The solution to be treated is typically referred to as the ''feed'' solution and contains volatile components that are soluble or miscible in the receiving solution (typically referred to as the ''stripping'' solution). The membrane must be completely hydrophobic in order to prevent the stripping solution from passing through the membrane into the feed solution.

In the osmotic transport treatment approved by TTB, wine is pumped along one side of a completely hydrophobic microporous membrane with water on the other side. The wine and the stripping solution run tangential to, and are separated by, the thin membrane. The driving force for the separation is the vapor pressure difference between the alcohol in the wine and the water-based stripping solution. The higher vapor pressure of the alcohol in the wine causes some of the alcohol to evaporate, pass through the microporous membrane, and then condense in the water-based stripping solution. The stripping solution is usually circulated across the membrane until the alcohol content of the feed wine and the stripping solution are essentially equal. The process is performed at ambient temperature without elevated pressures (other than

gentle pressure necessary to pump the wine).

As part of an industry member's request to experiment with this treatment, the industry member submitted before and after samples to the TTB Laboratory for analysis. The Laboratory's analysis found that the process did indeed reduce the level of alcohol in the wine.

Since the separation of alcohol from a fermented substance is considered to be a distilling process, osmotic transport operations cannot be conducted at winery premises but must instead take place at a distilled spirits plant. The alcohol-containing stripping solution may be used for distilling material or in the production of other than standard wine. The destruction of any alcohol derived from the osmotic transport process must be in accordance with the provisions of 27 CFR 19.691.

Accordingly, we are adding osmotic transport to the list of authorized processes in § 24.248, subject to the following conditions:

- The treatment must not alter the vinous character of the wine. The stripping solution must not migrate into the wine.
- The treatment must be conducted at a distilled spirits plant premises.

Public Participation

Comments Sought

We request comments from everyone interested. We are especially interested in comments that address the question of whether the use of a particular material or process addressed in this document is consistent with good commercial practice. Please support your comment with specific information about the material or process in question.

All comments must reference T.D. TTB–17 and must include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

Confidentiality

All comments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

You may submit comments in any of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section of this document.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5 by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation ensures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference T.D. TTB–17 on the subject line; and

(3) Be legible when printed on 8.5 by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this document on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under T.D. TTB–17.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Public Disclosure

You may view copies of this document and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 by 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this document and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this document, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this document's number and title to view the posted comments.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for temporary rules, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory analysis.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), we have determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. Issuing a temporary rule rather than a notice of proposed rulemaking allows all domestic winemakers to use new wine treatments that have already been approved for sometime. This will ''level the playing field'' and reduce the possibility of confusion as to which materials and processes are approved. For the same reason, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), we find that there is good cause for dispensing with a delayed effective date.

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Amendments to the Regulations

■ For the reasons discussed in the preamble, TTB amends 27 CFR part 24 as follows:

PART 24—WINE

■ 1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. The table in § 24.246 is amended:
■ a. By adding, in appropriate alphabetical order, new listings for

''acetaldehyde'' and ''calcium pantothenate'';

■ b. By revising the listing for ''copper sulfate'';

■ c. Under the heading for ''Enzymatic activity,'' by adding, in appropriate alphabetical order, new listings for ''carbohydrase (pectinase, cellulase, hemicellulase),'' ''cellulase (beta-glucanase)'' [immediately preceding the current listing for glucose oxidase], and ''lysozyme;''

■ d. By removing the listing for ''milk (pasteurized whole or skim)'' and adding, in its place, a heading for ''milk products (pasteurized whole, skim, or half-and-half)'' followed by two use listings; and

■ e. By revising the listing for ''silica gel (colloidal silicon dioxide).''

The additions and revisions read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE

Materials and use	Reference or limitation
* * * *	* * *
Acetaldehyde: For color stabilization of juice prior to concentration	The amount used must not exceed 300 ppm, and the finished concentrate must have no detectable level of the material. 21 CFR 182.60 (GRAS).
* * * *	* * *
Calcium pantothenate: Yeast nutrient to facilitate fermentation of apple wine.	The amount used must not exceed 0.1 lb. per 25,000 gallons. 21 CFR 184.1212 (GRAS).
* * * *	* * *
Copper sulfate: To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate added (calculated as copper) must not exceed 6 parts copper per million parts of wine (6.0 mg/L). The residual level of copper in the finished wine must not exceed 0.5 parts per million (0.5 mg/L). 21 CFR 184.1261 (GRAS).
* * * *	* * *
Enzymatic activity: Various uses as shown below	
* * * *	* * *
Carbohydrase (pectinase, cellulase, hemicellulase): To facilitate separation of juice from the fruit.	The enzyme activity used must be derived from *Aspergilius aculeatus*. FDA advisory opinion dated12/19/1996.
* * * *	* * *
Cellulase (beta-glucanase): To clarify and filter wine	The enzyme activity must be derived from *Tricoderma longibrachiatu*. The amount used must not exceed 3 g/hl. 21 CFR 184.1250 (GRAS).
* * * *	* * *
Lysozyme: To stabilize wines from malolactic acid bacterial degradation.	The amount used must not exceed 500 mg/L. FDA advisory opinion dated 12/15/93.
* * * *	* * *
Milk products (pasteurized whole, skim, or half-and-half):	
Fining agent for grape wine or sherry	The amount used must not exceed 2.0 liters of pasteurized milk per 1,000 liters (0.2 percent V/V) of wine.
To remove off flavors in wine	The amount used must not exceed 10 liters of pasteurized milk per 1,000 liters (1 percent V/V) of wine.
* * * *	* * *
Silica gel (colloidal silicon dioxide): To clarify wine or juice	Use must not exceed the equivalent of 20 lbs. colloidal silicon dioxide at a 30% concentration per 1000 gals. of wine. (2.4 g/L). Silicon dioxide must be completely removed by filtration. 21 CFR 172.480.
* * * *	* * *

■ 3. The table in § 24.248 is amended by adding, in appropriate alphabetical order, new listings for ''electrodialysis,'' ''metal reducing matrix sheet processing,'' ''nanofiltration,'' ''osmotic transport,'' and ''sulfide reducing matrix sheet processing,'' to read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL

Processes	Use	Reference or limitation
Electrodialysis	To aid in the removal of tartrates	This process must not alter the vinous character of the wine.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL—Continued

Processes	Use	Reference or limitation
* *	* * *	* *
Metal reducing matrix sheet processing	To reduce the level of metals such as copper and iron in wine.	(1) The active ingredient, polyvinylimidazol, must not constitute more than 40% by weight of the sheet. (2) Use of the sheet must not significantly alter the color of the wine.
Nanofiltration	To reduce the level of volatile acidity in wine (used with ion exchange).	This process must use permeable membranes which are selective for molecules not greater than 150 molecular weight with transmembrane pressures of 250 psi or less.
Osmotic transport [1]	For alcohol reduction	(1) Use must not alter the vinous character of the wine (2) None of the stripping solution may migrate into the wine.
* *	* * *	* *
Sulfide reducing matrix sheet processing	To reduce the level of sulfides in wine	(1) The active ingredient, polyvinylimidazol, must not constitute more than 40% by weight of the sheet. (2) Use of the sheet must not significantly alter the color of the wine.
* *	* * *	* *

Signed: October 1, 2004.

Arthur J. Libertucci,

Administrator.

Approved: October 22, 2004.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 04–25739 Filed 11–18–04; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–295–0470a; FRL–7834–2]

Revisions to the California State Implementation Plan, Great Basin and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Great Basin Air Pollution Control District (GBAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that are administrative and address changes for clarity and consistency.

DATES: This rule is effective on January 18, 2005 without further notice, unless EPA receives adverse comments by December 20, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What Rules Did the State Submit?
B. Are There Other Versions of These Rules?
C. What is the Purpose of the Submitted Rule Revisions?
II. EPA's Evaluation and Action
A. How is EPA Evaluating the Rules?
B. Do the Rules Meet the Evaluation Criteria?
C. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
GBAPCD	101	Definitions	09/24/03	11/04/03
VCAPCD	2	Definitions	04/13/04	07/19/04

On December 23, 2003 (GBAPCD) and August 10, 2004 (VCAPCD), these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: GBAPCD Rule 101, April 13, 1982 and VCAPCD Rule 2, June 28, 1999.

C. What Is the Purpose of the Submitted Rules Revisions?

Great Basin Rule 101 is amended by adding a set of open burning definitions to comply with the legal requirements imposed on the District. The rule is also amended by adding two new definitions for Emergency Generators and Water Pumps, and Owner/Operator.

Ventura County Rule 2 is amended by defining various terms that are used in multiple rules. The rule is also being amended by deleting some definitions that are no longer used in any of the District's rules.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Revisions?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 20, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 18, 2005. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2005.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 5, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(321)(i)(C) and (c)(332)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(321) * * *

(i) * * *

(C) Great Basin Air Pollution Control District.

(*1*) Rule 101, adopted on September 24, 2003.

* * * * *

(332) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 2, adopted on October 22, 1968, and amended on April 13, 2004.

[FR Doc. 04–25625 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7839–3]

Land Disposal Restrictions: Site-Specific Treatment Standard Variance for Selenium Waste for Chemical Waste Management, Chemical Services, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting a site-specific treatment standard variance from the Land Disposal Restrictions (LDR) treatment standards for a selenium-bearing hazardous waste generated by the glass manufacturing industry. EPA is granting this variance because the chemical properties of the waste differ significantly from those of the waste used to establish the current LDR treatment standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petition has adequately demonstrated that the waste cannot be treated to meet this treatment standard.

EPA is granting this variance to CWM Chemical Services LLC (CWM (Model City, NY)) to stabilize a selenium-bearing hazardous waste generated by Guardian Industries Corp. (Guardian) at their RCRA permitted facility in Model City, New York. With promulgation of this final rule, CWM may treat the Guardian waste to an alternate treatment standard of 28 mg/L, as measured by the TCLP. CWM (Model City, NY) may dispose of the treated waste in a RCRA Subtitle C landfill, provided they meet the applicable LDR treatment standard for any other hazardous constituents in the waste.

EPA is also modifying the existing alternative treatment standard for the Guardian selenium waste that EPA had previously granted to Heritage Environmental Services LLC (69 FR 6567, February 11, 2004) to be consistent with the levels that CWM has demonstrated as best demonstrated achievable technology (BDAT) for this selenium waste.

DATES: This final rule is effective on January 3, 2005 without further notice, unless EPA receives adverse comment by December 20, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Correspondence to the docket should be addressed to: EPA Docket Center, OSWER Docket (5305T), 1200 Pennsylvania Ave NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Juan Parra at (703) 308–0478 or *parra.juan@epa.gov,* Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA is publishing this rule without prior proposal because we view it as a noncontroversial action. We anticipate no significant adverse comments, because, to our knowledge, no new treatment options have become available to treat this high-concentration selenium waste more effectively. Having said this, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that could serve as a proposal to grant a site-specific treatment standard variance to CWM (Model City, NY), if significant adverse comments are filed. See the **SUPPLEMENTARY INFORMATION** section in that notice on how to submit comments.

This direct final rule will be effective on January 3, 2005 without further notice unless we receive adverse comment on the proposed rule by December 20, 2004. If we receive adverse comment on the direct final rule, we will withdraw the direct final action and the treatment standard variance for CWM (Model City, NY). We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting on this direct final rule must do so at this time.

Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0272.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Publicly available docket materials that are not available electronically may be viewed at the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Table of Contents

I. Background
A. What is the Basis for LDR Treatment Standard Variances?
B. What is the Basis of the Current Selenium Treatment Standard?
C. Previously Approved Variances for Selenium Wastes
D. Reasons for Lack of Secondary Selenium Recovery Capacity
II. Basis for CWM (Model City, NY) Variance Petition
A. Waste Characteristics
B. Chemical Properties of the Guardian Waste and Results of CWM Treatment
C. Alternative Treatment Standard for CWM to Treat the Guardian Selenium Waste
D. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?
E. What Are the Terms and Conditions of the Variance?
III. New Best Demonstrated Available Technology Determination for Guardian Selenium Waste
IV. Statutory and Executive Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background

A. What Is the Basis for LDR Treatment Standard Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the DC Circuit in *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations because an individual waste can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard. For such wastes, EPA has a process by which a generator or treater may seek a treatment standard variance (see 40 CFR 268.44). If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current Selenium Treatment Standard?

Treatment of selenium poses special difficulties. In particular, it can be technically challenging to treat wastes containing selenium and other metals, *e.g.*, cadmium, lead or chromium, because of their different chemical properties and solubility curves (62 FR 26041, May 12, 1997).

The current treatment standard for wastes exhibiting the toxicity characteristic for selenium is based upon the performance of stabilization treatment technologies on selenium-bearing wastes with low concentrations. When the Agency developed these treatment standards for selenium, EPA believed that wastes containing high concentrations of selenium were rarely generated and land disposed (59 FR 47980, September 19, 1994). The Agency also stated that it believed that, for most wastes containing high concentrations of selenium, recovery of the selenium would be feasible using recovery technologies currently employed by copper smelters and copper refining operations (Id.). The Agency further stated in 1994 that it did not have any performance data for selenium recovery, but available information indicated that some recovery of elemental selenium out of certain types of scrap material and other types of waste was practiced in the United States. In 2004, there is no domestic production of secondary selenium.[1] Primary selenium is recovered, as a co-product with copper, from anode slimes generated in the electrolytic refining of copper.

In 1994, the Agency used performance data from the stabilization of mineral processing waste that was characteristically hazardous for selenium (waste code D010) to set the national treatment standard for selenium. At that time, we determined that this was the most difficult to treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80 mg/L, which (after considering the range of treatment process variability) led to EPA establishing a national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters. This D010 mineral processing waste also contained toxic metals (*i.e.*, arsenic, cadmium, and lead) above characteristic levels. The treatment technology used to establish the selenium levels also resulted in meeting the LDR treatment standards for these non-selenium metals. The reagent to waste ratios varied from 1.3 to 2.7 (62 FR 26041, May 12, 1997).

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 non-wastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L.

[1] ''Selenium'' U.S. Geological Survey—Minerals Yearbook 2004.

C. Previously Approved Variances for Selenium Wastes

When EPA established the treatment standards for metal wastes and mineral processing wastes (63 FR 28555, May 26, 1998), we noted that we received comments from one company, Chemical Waste Management Inc. (CWM (Kettleman City, CA)), indicating that it was attempting to stabilize selenium-bearing wastes with concentrations much higher than those EPA had examined when it established the national treatment standard for wastes exhibiting the toxicity characteristic for selenium. In response, EPA proposed and subsequently granted variances for two high-level selenium waste streams. EPA granted these variances for three years, and required CWM (Kettleman City, CA) to conduct studies on approaches to further reduce the leachability of such treated wastes (63 FR 56886, May 26, 1999). EPA also required the company to investigate alternative treatment technologies that might provide more effective treatment, report annually on these investigations, and provide any analytical data from the treatment studies.[2] The annual reports include stabilization recipes that were used to meet the alternative treatment standards, the selenium concentrations in the untreated wastes, and the analytical results from leach testing of the treated wastes. EPA renewed this variance for another three year term, and continued to require CWM (Kettleman City, CA) to report on its treatability studies and to investigate whether more effective treatment is available (67 FR 36849, May 28, 2002). In 2004, EPA permanently established the two site-specific variances from the Land Disposal Restrictions treatment standards for Chemical Waste Management Inc., at their Kettleman Hills facility in Kettleman City, California, for these two selenium-bearing hazardous wastes (69 FR 6567, February 11, 2004).

On May 14, 2003, Heritage Environmental Services LLC (Heritage) submitted a site-specific treatment standard variance petition to EPA for their RCRA permitted facility in Indianapolis, Indiana. The petition requested a treatment standard variance for a selenium-bearing hazardous waste generated by Guardian Industries Corp. Heritage demonstrated that, because the physical and chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified levels or by the specified methods. EPA determined that stabilization of selenium with cement kiln dust, along with the addition of ferrous sulfate as a reagent for hexavalent chromium, was the best demonstrated available technology for the Guardian waste. EPA granted the site-specific treatment standard variance from the D010 treatment standards for the Guardian waste stream on February 11, 2004 (69 FR 6567).

D. Reasons for Lack of Secondary Selenium Recovery Capacity

Primary selenium [3] is a co-product in the mining of copper ores. The principal markets for selenium are in electronics (30%), glass manufacturing (20%), pigments (19%), metallurgical additives (14%) and agricultural/biological applications (6%).[4] In glass manufacturing, selenium is used to color container glass and other soda-lime silica glasses and to reduce solar heat transmission in architectural plate and automotive glass.

Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, EPA's preference, rather than stabilization and land disposal, would be to recover the selenium in an environmentally sound manner. However, there was no recorded domestic production of secondary selenium in 2004.[5] All potential secondary selenium recovery technologies being considered have remained pilot projects and none of them have been shown to be economically viable. These factors suggest that development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably expected in the near future, and stabilization remains the best available treatment technology.

II. Basis for CWM (Model City, NY) Variance Petition

Under 40 CFR 268.44(h), facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or to EPA's delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified levels or by the specified methods. There are other grounds for obtaining treatment standard variances, but this is the only provision relevant to this action.

On April 9, 2004, Chemical Waste Management-Chemical Services L.L.C. (CWM (Model City, NY)) submitted their petition for a treatment standard variance to EPA. All information and data used in the development of this treatment standard variance can be found in the RCRA docket (RCRA–2004–0009) for this rulemaking.

A. Waste Characteristics

Guardian Industries Corp., in Jefferson Hills, Pennsylvania, is a specialty glass manufacturing facility. Emissions from its glass furnace are first subjected to lime injection, and subsequently captured in an electrostatic precipitator. Lime is added to remove sulphur compounds and selenium from the glass furnace gases. This waste stream consists of lime with 100–70,000 mg/kg selenium (0.1%–7%), 50–1000 mg/kg of chromium, 0–50 mg/kg of lead and 1–100 mg/kg of cobalt. The dust is a D010 characteristic waste because the selenium concentration exceeds 1.0 mg/L, as measured by the TCLP.[6] The waste is a dry powder with a bulk density of about 0.4 g/cm^3, and contains no free liquids or organic constituents. The calcium content is high, approximately 30%, since the waste contains lime injected to the furnace exhaust. The rate of variation in the amount of waste is related to the manufacturing demand, and ranges from 20–50 tons/month.

The Land Disposal Restrictions found in 40 CFR 268.40(e) require most characteristic wastes to meet the universal treatment standards (UTS) in 40 CFR 268.48 for all underlying hazardous constituents (UHCs) before the waste can be land disposed. Analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present above UTS levels is chromium; occasionally the dust is also a D007 waste because the chromium exceeds the hazardous waste characteristic level of 5 mg/L, as

[2] All four of CWM's annual reports are in the docket ID No. RCRA 2003–0025.

[3] ''Selenium is found in 75 different mineral species; however, pure selenium does not exist as an ore. For this reason, primary selenium is recovered from anode slimes generated in the electrolytic refining of copper.'' U.S. EPA (F–96–PH4A–S0001): Identification and Description of Mineral Processing Sectors and Waste Streams.

[4] ''Canadian Mineral Yearbook'' 1995.

[5] ''Selenium'' U.S. Geological Survey—Minerals Yearbook—2004.

[6] This waste currently has an LDR treatment variance based on a petition submitted by Heritage (see 69 FR 6567, February 11, 2004).

[7] In the Phase IV Land Disposal Restrictions rule, the Agency did not generally use stabilization data with reagent to waste ratios greater than 1. ''Final

measured by the TCLP. The universal treatment standard for chromium is 0.6 mg/L, as measured by the TCLP. As an underlying hazardous constituent, chromium must be treated to below the 0.6 mg/L universal treatment standard for the waste to be properly land disposed (58 FR 29560, May 24, 1993 and 63 FR 28556, May 26, 1998). Once the Guardian waste has been stabilized for selenium and treated for any underlying constituents, the waste can be disposed in a hazardous waste landfill.

B. Chemical Properties of the Guardian Waste and Results of CWM Treatment

An approach to immobilize the selenium in the Guardian waste and to reduce its exposure to leaching agents is to stabilize it with cement. The solid matrix chemically binds the metals in the waste and substantially lowers the surface area potentially exposed to leaching from that of untreated dust. As a result, the solidified waste should have a lower leaching potential after the waste is disposed in a hazardous waste landfill.

As mentioned above, analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present is chromium. CWM (Model City, NY) conducted treatability studies demonstrating that the addition of cement kiln dust alone is not sufficient to reduce the chromium levels to below the 0.6 mg/L treatment standard. To further treat the chromium in the waste, the hexavalent chromium ion must be reduced to the trivalent state so that precipitation can occur. CWM (Model City, NY) used ferrous sulfate for this purpose.

CWM (Model City, NY) conducted several rounds of testing using different stabilization recipes, which had varied amounts of Portland cement, cement kiln dust, ferrous sulfate, hydroxylamine hydrochloride, quick lime and polysulfide. Collectively, the TCLP tests on treated Guardian waste samples indicate a significant reduction in leachability. This reduction, however, is not enough to meet the LDR treatment standard of 5.7 mg/L, as measured by the TCLP.

EPA has determined, in analyzing the data from the preliminary tests, that the most effective stabilization recipe for this waste consists of 0.20 parts ferrous sulfate combined with 1.0 part cement kiln dust, resulting in a reagent to waste ratio of 1.20. Water is also added to make a thick paste, that upon curing, solidifies into a hard, cemented material. This optimized stabilization recipe reduces the leachable selenium and minimizes the amount of reagent that must be used to achieve this result.

Table I shows the results of leaching, as measured by the TCLP, of Guardian's waste treated using the optimized stabilization recipe. CWM (Model City, NY) stabilized the samples with reagent to waste ratios of 1.20. Treated selenium concentrations for the ten samples ranged from 15.09 mg/L to 24.5 mg/L, as measured by the TCLP.

SUMMARY OF TREATABILITY STUDIES OF THE GUARDIAN SELENIUM WASTE

20% $FESO_4$+ 100% cement kiln dust	
Guardian sample ID	Se waste TCLP (mg/L)
0408138–01	[1] 90.9
0408138–02	19.3
0408138–03	21.49
0408138–04	24.5
0408138–05	22.9
0408138–06	23.4
0408096–04	19
0408096–03	18.14
0408096–02	15.12
0408096–01	15.6
0407946–14	15.09

[1] (Untreated).

C. Alternative Treatment Standard for CWM To Treat the Guardian Selenium Waste

When the Agency developed the current national treatment standard of 5.7 mg/L, as measured by the TCLP, for D010 selenium non-wastewaters, as discussed earlier, data with reagent to waste ratios that varied from 1.3 to 2.7 were used to calculate the treatment standard.[7] The Heritage selenium variance that was previously granted for the Guardian waste reflected a reagent to waste ratio of 2.35 (69 FR 6567, February 11, 2004). CWM (Model City, NY), treating the same Guardian waste, achieved a reagent to waste ratio of 1.2. CWM's (Model City, NY) reagent to waste ratio is significantly lower than the ratio reflected in the Heritage variance. The Agency notes that, by keeping the reagent to waste ratio to minimal levels, CWM (Model City, NY) is minimizing the amount of treated waste to be disposed in the hazardous landfill. The Agency recommends that CWM (Model City, NY) use a reagent to waste ratio of 1.2 as an upper limit.

Using the BDAT methodology,[8] the Agency has calculated an alternative treatment standard of 28 mg/L, as measured by the TCLP, based on ten data points (15.09, 15.6, 15.12, 18.14, 19, 19.3, 21.49, 24.5, 22.9, and 23.4 from Table I) that were the result of stabilization treatment using a reagent to waste ratio of 1.2 for the waste generated by Guardian Industries Corp.

D. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?

After careful review of the data and petition submitted by CWM (Model City, NY), we conclude that CWM (Model City, NY) has adequately demonstrated that the wastes satisfy the requirements for a treatment standard variance under 40 CFR 268.44(h)(1). CWM (Model City, NY) has demonstrated that Guardian's glass manufacturing waste differs significantly in chemical composition from the waste used to establish the original selenium treatment standard. Selenium TCLP concentrations in the untreated waste are one or two orders of magnitude higher than TCLP concentrations in the waste used to develop the treatment standard for D010 hazardous wastes. Data from CWM (Model City, NY) demonstrate that wastes containing high concentrations of selenium are not easily treated. Furthermore, CWM (Model City, NY) is using stabilization as the treatment technology, which is consistent with EPA's determination that stabilization is the best available treatment technology for this waste, and the process is well-designed and well-operated.

In addition, CWM (Model City, NY) intends to minimize potential leaching in the landfill by restricting the placement of the waste in the cell. The stabilized waste will not be placed directly on the operation layer on the floor of the landfill, nor in the area of a stand pipe or leachate sump pump. EPA is supportive of this approach.

Therefore, EPA is today granting a site-specific treatment standard variance from the D010 treatment standards for the Guardian waste stream in question. Today's alternative treatment standard will provide sufficient latitude for CWM (Model City, NY) to treat the other metal present in the waste (chromium) to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves. EPA is amending 40 CFR 268.44 to include a

[7] In the Phase IV Land Disposal Restrictions rule, the Agency did not generally use stabilization data with reagent to waste ratios greater than 1. ''Final Draft Site Visit Report for the August 20–21 Site Visit to Rollins Environmental's Highway 36 Commercial Waste Treatment Facility Located in Deer Trail, Colorado,'' November 21, 1996, and the economic analysis supporting the Phase IV final rule.

[8] BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

selenium treatment standard of 28 mg/L, as measured by the TCLP, for the Guardian waste it treats.

E. What Are the Terms and Conditions of the Variance?

Since this rule approves a variance from a numerical treatment standard, CWM (Model City, NY) may vary the reagent recipe it uses to best meet the alternative numerical standard. The Agency notes that, to avoid questions of impermissible dilution, CWM (Model City, NY) will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not desire to prevent further optimization of the treatment process. However, the Agency recommends that CWM (Model City, NY) use a reagent to waste ratio of 1.2 as an upper limit. This is the ratio used in the treated waste that formed the basis for establishing today's alternative treatment standard.

The treated waste, provided it meets applicable LDR treatment standards for any other hazardous constituents in the waste,[9] will be disposed in a RCRA Subtitle C landfill.

III. New Best Demonstrated Available Technology Determination for Guardian Selenium Waste

In today's notice, EPA has determined, in analyzing the CWM (Model City, NY) and Heritage data (69 CFR 6568, February 11, 2004) from the tests on the Guardian Waste, that the most effective stabilization recipe for this waste consists of 0.20 parts ferrous sulfate combined with 1.0 part cement kiln dust, resulting in a reagent to waste ratio of 1.20 to 1. This optimized stabilization recipe from CWM (Model City, NY) reduces the leachable selenium and minimizes the amount of reagent that must be used to achieve this result. As explained previously, we have calculated an alternative treatment standard, based on the performance of their treatment data, of 28 mg/L, as measured by the TCLP.

As described above, on February 11, 2004, EPA granted a site-specific variance from the D010 treatment standard for the same Guardian waste. This variance was granted to Heritage Environmental Services, LLC. The treatment standard that EPA approved in this variance, 39.4 mg/L, as measured by the TCLP, and the reagent to waste ratio (2.35 to 1 as an upper limit) used to achieve this level, are both higher than those achieved by CWM (Model City, NY) for the source waste. These results are obviously higher than the alternative treatment standard for the same waste. After careful study, EPA sees no reason that the treatment standard for the same waste cannot be duplicated elsewhere. EPA has determined in today's rule that the treatment results achieved by CWM (Model City, NY) reflect the best demonstrated available treatment for the Guardian selenium waste stream. The alternative treatment standard will provide sufficient latitude for CWM (Model City, NY) to treat the chromium present to meet universal treatment standards (UTS). We also find (obviously) that since the treatment standard is above the characteristic level for selenium, that treatment is not being required to a level below which threats to human health and the environment are minimized, and that treatment of selenium to the lower level established further minimizes threats posed by the waste's land disposal. Therefore, in addition to granting a site-specific variance to CWM (Model City, NY), EPA is modifying the Heritage alternative treatment standard for the Guardian selenium waste that EPA had previously granted so that it is consistent with the level that CWM (Model City, NY) has demonstrated as BDAT for this selenium waste.

[9] Note that disposal in a Subtitle C landfill is required because the treated wastes are still characteristic for selenium (*i.e.*, the waste has TCLP values above the toxicity characteristic level for selenium of 1.9 mg/L).

IV. Statutory and Executive Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

Because this rule does not create any new regulatory requirements, it is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This variance only changes the treatment standard applicable to a D010 waste stream that is treated at the CWM Chemical Services, LLC facility in Model City, New York and at the Heritage Environmental Services LLC facility in Indianapolis, Indiana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This site-specific treatment standard variance does not impose information collection burden on CWM (Model City) given their petition contains the information needed to determine effectiveness of treatment. All information and data used in the development of this treatment standard variance can be found in the RCRA docket (RCRA–2004–0009) for this rulemaking. This action also does not change in any way the paperwork requirements already applicable to this waste. Therefore, it does not affect the requirements under the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This final rule is not subject to notice and comment requirements under the APA or any other statute because the rule will not have a significant economic impact on a substantial number of small entities. This treatment standard variance does not create any new regulatory requirements. Rather, it establishes an alternative treatment standard for a specific waste stream, and it applies to two facilities; the CWM Chemical Services, LLC facility in Model City, New York and the Heritage Environmental Services LLC facility in Indianapolis, Indiana.

After considering the economic impacts of today's direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and it does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This rule also does not create new regulatory requirements; rather, it merely establishes an alternative treatment standard for a specific waste that replaces a standard already in effect. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule issues a variance from the LDR treatment standards for a specific characteristic selenium waste. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The waste described in this treatment standard variance will be treated by CWM Chemical Services, LLC and Heritage Environmental Services LLC, and then be disposed of in a RCRA Subtitle C landfill, ensuring that there will be no risks that may disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's variance applies to a characteristically hazardous waste stream at the CWM Chemical Services, LLC facility in Model City, New York and at the Heritage Environmental Services LLC facility in Indianapolis, Indiana. The selenium waste will be disposed of in a RCRA Subtitle C landfill, after appropriate treatment, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular circumstances.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804 (2). This rule will be effective January 3, 2005.

List of Subjects in 40 CFR Part 268

Environmental Protection, Hazardous waste, Variance, Selenium.

Dated: November 10, 2004.

Thomas P. Dunne,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 2. Section 268.44, the table in paragraph (o) is amended by:

■ A. Revising the entry for ''Guardian Industries Corp.''

■ B. Adding footnote number 12.

The revisions and additions read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwaste waters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*	*	
Guardian Industries Corp., Jefferson Hills, PA [6 11 12].	D010	Standards under 268.40.	Selenium	NA	NA	28 mg/L TCLP	NA
*	*	*	*	*	*	*	

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * *

[6] Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

* * * * *

[11] D010 waste generated by this facility may be treated by Heritage Environmental Services, LLC. at their treatment facility in Indianapolis, Indiana.

[12] D010 waste generated by this facility may be treated by Chemical Waste Management, Chemical Services, LLC. at their treatment facility in Model City, New York.

Note: NA means Not Applicable.

[FR Doc. 04–25716 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–19625]

RIN 2127–AH96

Federal Motor Vehicle Safety Standards—Motor Vehicle Brake Fluids

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

ACTION: Final rule.

SUMMARY: This document amends our standard on brake fluids by removing the evaporation test and modifying the corrosion test. We are removing the evaporation test because we have concluded that it is unnecessary, given changes in brake system designs and in brake fluid formulations since the test was developed. We are modifying the corrosion test to improve test repeatability and reproducibility.

DATES: *Effective Date:* The effective date of this final rule is: November 21, 2005, except for the removal of S5.1.8, S6.8, S6.8.1, S6.8.2, S6.8.3, and S6.8.4 from § 571.116, which will be effective January 18, 2005. *Petitions for reconsideration:* Petitions for reconsideration of this final rule must be received not later than: January 3, 2005.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2992). Ms. Nakama's fax number is: (202) 366–3820.

For other issues: Mr. Sam Daniel, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4921). Mr. Daniel's fax number is: (202) 366–7002.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Proposed Rule
- A. Evaporation Test
- B. Corrosion Test

II. Comments on the Proposed Rule and NHTSA's Decisions
- A. Comments on Evaporation Test and NHTSA's Decision
- B. Comments on Corrosion Test and NHTSA's Decision

III. Statutory Bases for the Final Rule
IV. Effective Dates
V. Rulemaking Analyses and Notices
- A. Executive Order 12866 and DOT Regulatory Policies and Procedures
- B. Regulatory Flexibility Act
- C. National Environmental Policy Act
- D. Executive Order 13132 (Federalism)
- E. Unfunded Mandates Act
- F. Executive Order 12778 (Civil Justice Reform)
- G. Paperwork Reduction Act
- H. Regulation Identifier Number (RIN)
- I. Plain Language
- J. Executive Order 13045
- K. National Technology Transfer and Advancement Act

Regulatory Text of the Final Rule

I. Proposed Rule

Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids,* specifies requirements for fluids for use in hydraulic brake systems of motor vehicles, containers for these fluids, and labeling of the containers. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles that may occur because of the manufacture or use of improper or contaminated fluid.

On January 16, 2001, we published in the **Federal Register** (66 FR 3527) [1] a notice of proposed rulemaking (NPRM) to make technical modifications in two of the standard's tests, the evaporation test and the corrosion test. We believed the proposed modifications would improve repeatability and reproducibility [2] of the tests, and thus improve the enforceability of the standard. We also requested comments concerning the retention of the evaporation test.

A. Evaporation Test

FMVSS No. 116 specifies various performance requirements relating to evaporation that must be met when brake fluid is tested according to a specified procedure that involves heating the brake fluid in an oven for an extended period of time. Among other things, the loss by evaporation must not exceed 80 percent by weight. See S5.1.8 and S6.8 of the standard.

In the NPRM, we stated that for a number of years, we have been concerned that the evaporation test may allow too much variability in test results. Because of this, we sponsored a study titled ''Evaporation Test Variability Study,'' which was published in May 1993. The study sought to identify and evaluate parameters of the brake fluid evaporation test procedure of FMVSS No. 116 that influence the high variability of results between laboratories. It also sought to develop procedural improvements to increase the precision and reproducibility of brake fluid evaporation measurements. This included validating procedural modifications through conducting an interlaboratory round robin program using four designated brake fluids.

The study identified four means by which test result variability could be reduced: (1) Using a rotating shelf in the oven with a 6 rpm sample rotation, (2) specifying the location of the shelf supporting the sample within the oven, (3) controlling the oven temperature monitoring point, and (4) using oven calibration fluid for purposes of oven standardization. A copy of the study is available in the docket at NHTSA–2001–8633–2.

After we published the study, the Society of Automotive Engineers (SAE) committee on brake fluids initiated work to consider revising its evaporation test procedure to address these points. The SAE evaporation test procedure is set forth as part of Motor Vehicle Brake Fluid—SAE J1703 JAN95. The SAE committee developed a draft procedure that uses a rotating shelf oven, defines shelf placement, and includes temperature monitoring. The committee did not reach agreement on an oven calibration fluid because of concerns about lot variability.

[1] Docket No. NHTSA 00–8633.

[2] In order for a test to have good repeatability, there must not be undue variability in results when the same test is replicated at the same site. In order for a test to have good reproducibility, there must not be undue variability in results when the same test is replicated at different sites.

More recently, however, the SAE committee voted to eliminate the evaporation test from its standard. Members of the committee believed that the requirement is outdated. The test was developed at a time when brake fluids did not have as good resistance to evaporation as today's brake fluids, and vehicle braking systems were not sealed. Members of the committee also believed that the evaporation test is redundant with the boiling point test, which evaluates similar brake fluid properties. The test was first deleted from the 2002 edition of SAE J1703.

Particularly given that the evaporation test included in FMVSS No. 116 was originally developed by SAE, we addressed in the NPRM the issue of whether the test should be retained in our standard. In the NPRM, we tentatively concluded that the evaporation test should be retained in FMVSS No. 116, noting that even though today's brake fluids may well have better resistance to evaporation than those in use when the test was originally developed, deletion of the test from FMVSS No. 116 could permit the introduction of inferior brake fluids into the United States market. We also noted that even if current brake fluid manufacturers would be unlikely to introduce such products, such introduction could come from new market entrants. For these reasons, we tentatively decided to retain the evaporation test in Standard No. 116, but requested comments on this issue.

In the NPRM, we stated that assuming that the evaporation test was retained in FMVSS No. 116, we believed it was appropriate to improve the repeatability and reproducibility of the test. We stated our belief that while there are unresolved technical issues concerning oven calibration fluid, the repeatability and reproducibility of the evaporation test can be improved by adopting the other means for reducing test result variability that were identified by the NHTSA-sponsored report and included in the SAE committee draft procedure. Accordingly, in the NPRM, we proposed to amend the test procedure to specify use of a rotating shelf oven, define shelf placement, and specify temperature monitoring.

B. Corrosion Test

FMVSS No. 116's corrosion test involves placing six metal strips (steel, tinned iron, cast iron, aluminum, brass and copper) in a standard brake wheel cylinder cup in a test jar, immersing the entire assembly in the brake fluid being tested, and then heating the fluid for an extended period of time. The metal strips and wheel cylinder cup represent the materials that comprise brake system components that are in contact with brake fluid (master cylinders, brake lines, caliper pistons, wheel cylinders, etc.).

A variety of performance requirements must be met at the end of the corrosion test procedure. Among other things, the metal strips are examined for weight change, which must not exceed specified percentages. See S5.1.6 and S6.6 of the standard.

In the NPRM, we stated that while we do not have as much information concerning variability of the corrosion test as we do for the evaporation test, we identified a change in the specification concerning how the metal strips are prepared prior to testing that we believe would improve repeatability and reproducibility. The standard currently specifies that each of the strips, other than the tinned iron strips, is to be abraded with wetted silicon carbide paper grit No. 320A until all surface scratches, cuts and pits are removed, and then polished with grade 00 steel wool.[3] In the NPRM, we stated our belief that less variability would result if the strips were further abraded with wetted silicon carbide paper grit No. 1200, instead of being polished with grade 00 steel wool, and if a visual acuity requirement for evaluating the presence of surface scratches, cuts and pits were specified.

We stated that if these changes were made, the repeatability and the reproducibility of the Corrosion test might be improved, since the steel wool might produce slight surface irregularities due to interaction with dissimilar metals that the No. 1200 silicon carbide paper would not. The visual acuity requirement would ensure removal of all surface scratches, cuts and pits that are visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches).

II. Comments on the Proposed Rule and NHTSA's Decisions

In response to the NPRM, we received comments from: ABIC Testing Laboratories, Inc. ABIC); Case Consulting Laboratories, Inc. (Case); Castrol International (Castrol); Clariant GmbH (Clariant); Continental Teves AG & Co.oHG (Continental); DaimlerChrysler Corporation (DaimlerChrysler); Dr. Jos Morsink (a member of the SAE Motor Vehicle Brake Fluids Standards Committee) of Shell Chemicals (Shell); Society of Automotive Engineers of Japan (JSAE); Toyota Motor North America, Inc. (Toyota); and from Tammy T. Shannon, Ph.D. and Gregory A. Carpenter (Brake Fluid Technologists and Members of the SAE Motor Vehicle Brake Fluids Standards Committee) of Union Carbide (Union Carbide). We also received a February 14, 2003 submission from members of the SAE Brake Fluids Committee and other brake fluid experts.

A. Comments on Evaporation Test and NHTSA's Decision

Several commenters on the NPRM argued that the evaporation test should be removed from FMVSS No. 116. Continental stated that it agrees with the decision of ''the SAE Committee to cancel the evaporation test.'' DaimlerChrysler recommended that the evaporation test be removed, stating ''the test is simply obsolete, given the vastly improved brake fluids and sealed braking systems of today.'' DaimlerChrysler stated that the boiling point test would ''reveal most of the fluid property weaknesses targeted by the evaporation test,'' providing the agency with ''reasonable assurance that substantially inferior brake fluids would not be introduced to the U.S. market.''

Castrol provided several reasons why it believes the evaporation test should be removed. Castrol stated that since brake systems now tend to be sealed, evaporation is no longer an issue as it was in the past. Castrol stated further that although in some countries, there are brake fluid products (based on fluids such as water and diacetone alcohol) that would not meet the evaporation test requirements, it believes these fluids would not meet other FMVSS requirements. Castrol concluded that if these ''new marketers were to enter the U.S. market, they would not be able to claim FMVSS 116 standards with these inferior fluids.''

Clariant and Shell provided similar explanations of why the SAE Brake Fluids Standards Committee voted to remove the evaporation test, stating ''it has not been just an ad hoc decision.'' Clariant and Shell stated that the Committee, after considering data from many support laboratories, concluded that the evaporation test was not reliable enough. Shell stated that although the repeatability improves by using a rotating oven, the reproducibility ''stays below an acceptable performance level.'' That company also stated that the evaporation test can be considered as outdated since it originates from a time that volatile alcohol was used as part of a brake fluid formulation. Clariant and

[3] Tinned iron strips are not abraded or polished during preparation for corrosion testing because the tin coating is very thin and the test strips are highly polished to begin with.

Shell expressed the view that concerns about evaporation test testing for potential vapor lock are addressed by the equilibrium reflux boiling point (ERBP) requirements.

Union Carbide expressed the view that the evaporation test is ''outdated,'' and that brake fluid evaporation leading to vapor lock is ''not a danger in modern braking systems.'' Union Carbide expressed the view that even with the proposed changes to the evaporation test, the ''results are unacceptable in repeatability and reproducibility.''

In a submission to NHTSA dated February 14, 2003, a member of the SAE Brake Fluids Committee provided background information concerning why the committee decided to recommend deletion of the evaporation test. The document was a summation of inputs from various SAE Brake Fluids Committee members, knowledgeable brake/brake fluid experts, and general automotive/historical references.[4] The document stated that the evaporation test ''is not a practical test, due to continuing lack of repeatability and reproducibility much less functional variability'' and the fact that today, brake systems are sealed to minimize brake fluid evaporation. The document stated that brake systems are also sealed to meet the requirements in FMVSS Nos. 105, *Hydraulic and Electric Brake Systems,* and No. 135, *Passenger Car Brake Systems.* FMVSS Nos. 105 (at S5.4.2) and 135 (at S5.4.2) require that brake fluid reservoirs contain sufficient fluid to operate brake systems normally when the friction components (pads and linings) are worn. FMVSS Nos. 105 (at S7.18(c)) and 135 (at S7.17(b)) also require that the brake system show no signs of leakage during inspection after completion of testing. According to the document, these requirements ensure that the braking system is highly resistant to brake fluid evaporation. The agency believes that the requirements in FMVSS Nos. 105 (at S5.4.2) and 135 (at S5.4.2) do not directly assure that brake fluid is highly resistant to evaporation because a sufficiently large master cylinder reservoir will provide adequate brake fluid to meet these requirements.

The February 14, 2003 document also stated that in FMVSS No. 116, the stroking properties test (at S5.1.13 and S6.13), subjects brake fluid to conditions similar to those in the evaporation test. Also, the stroking properties test simulates brake fluid function in a vehicle brake system, which the evaporation test does not do. The stroking properties test requires that brake fluid be maintained at a higher temperature for a longer period of time than the evaporation test procedures (evaporation test at 100 degrees Celsius for 46 hours; the stroking properties test at 120 degrees Celsius for approximately 70 hours). Therefore, in order to meet the stroking properties test, the brake fluid must be highly resistant to evaporation. It should be noted that under certain conditions, the evaporation test requires that brake fluid be heated continuously for 7 days. However, the stroking test could be used to evaluate brake fluid evaporation rate.

The evaporation test at S5.1.8(b) specifies that the ''residue from the brake fluid after evaporation shall contain no precipitate that remains gritty or abrasive * * *'' The February 14, 2003 document also cited S5.1.6, Corrosion; S5.1.9, Water tolerance; and S5.1.10, Compatibility, as tests in FMVSS No. 116 that could be used, with minor modifications, to evaluate the ''grittiness'' of the brake fluid.

Castrol and the February 14, 2003 document stated that paragraph S5.1.1. Equilibrium Reflux Boiling Point (ERBP) and paragraph S5.1.2, Wet ERBP, also assess the ability of the brake fluid to resist evaporation. The boiling point tests determine the boiling point temperature of new brake fluid (ERPB) and when water has been added, 3 percent by weight (wet ERBP). The boiling point tests and the evaporation test evaluate similar brake fluid properties.

Several other commenters to the NPRM, including ABIC, Case, Toyota, and JSAE, favored retaining the evaporation test, and suggested how the evaporation test could be made more objective, with the comments focusing on improving repeatability and reproducibility by providing more specifications for the oven. ABIC stated that the evaporation test ''is the only test procedure, which gives an indication of the grittiness of the fluid tested.'' ABIC suggested that an ''open, bared type'' shelf be used to hold the brake fluid test samples in the oven used in the evaporation test. ABIC expressed the view that the ''open, bared type'' shelf would allow adequate heat and airflow to rise up from the bottom of the shelf. ABIC further stated that in some ovens used to test brake fluid samples, the shelves were ''almost a solid piece of metal,'' absorbing heat. ABIC stated that this build up of heat under the tested samples may be another reason for individual differences in evaporation loss between samples tested.

Case cited the May 1993 NHTSA-sponsored report as supporting improvement in Evaporation test results. Case stated that the ''rotating shelf modification and standardized positioning of temperature sensors will produce much better agreement within and between laboratories.''

Toyota commented that the size of the oven and the area and shape of the oven's vent hole should be specified because without such detailed specifications, the test equipment may vary between laboratories used by NHTSA and the industry. JSAE commented that other factors such as ''oven capacity or vent area'' may affect the evaporation results. Neither commenter gave specifications for the ovens or the vent areas that it believes would result in a more repeatable and reproducible evaporation test.

After careful consideration of the comments, we have decided to remove the evaporation test. As discussed earlier, in preparing the NPRM, we considered whether the test should be retained in FMVSS No. 116, particularly in light of the decision by the SAE Brake Fluids Committee to remove the test from the SAE standard. We indicated in the NPRM that we were concerned that removal of the test could permit the introduction of inferior brake fluids into the United States market, even if current brake fluid manufacturers would be unlikely to introduce such products.

On further consideration of this issue, however, we are persuaded that the evaporation test is unnecessary given changes in brake system designs and in brake fluid formulations since the test was developed, and that other tests in the standard will prevent the introduction of inferior brake fluids into the United States market. In particular, we note that the evaporation test dates back to a time when hydraulic brake systems were vented and when brake fluid contained alcohol or castor oil (substances with lower boiling point temperatures than present day brake fluid formulas). Present day brake fluid formulas do not contain alcohol or castor oil. Moreover, FMVSS No. 116 includes other tests, such as the boiling point test, the stroking test, the corrosion test, and the water tolerance test, which will prevent the introduction of inferior brake fluids into the United States market.

We have also factored continuing problems related to repeatability and reproducibility into our decision. While it might be possible to address these problems by further research, we believe it would not be a good use of our resources to conduct such research given the evidence that there is no longer a safety need for this test in FMVSS No. 116.

[4] Brake TEC, ''Re: FMVSS No. 116–Evaporation Test'' Docket No. NHTSA–2000–8633–13.

B. Comments on Corrosion Test and NHTSA's Decision

Commenters provided a variety of views on whether and on how the corrosion test should be changed. Two commenters, Case and Union Carbide, recommended that the proposed changes to the corrosion test be made final.

Castrol, DaimlerChrysler, Clariant, and JSAE gave qualified support for the proposed changes to the corrosion test. Castrol suggested that the corrosion test be amended by eliminating the step of ''finishing'' the test strips following the preparation and cleaning of the surface with the 320A silicon carbide paper, in other words, to follow the procedure currently specified in SAE J1703. In general, Castrol recommended compatible national and international standards.

DaimlerChrysler stated that it does not have the ''technical experience or knowledge that would allow for fair judgment of the proposed test strip preparation method.'' It noted that NHTSA should ''take care that the quantitative results of corrosion testing are not significantly altered due to changes in testing methodology, as such an alteration would necessitate reconsideration of compliance as well.''

Clariant agreed with the proposed change from steel wool to the ''wetted silicon carbide paper grit No. 1200.'' However, it stated that the surface of the test specimen with the ''wetted silicon carbide paper grit No. 1200'' will be rougher than after the steel wool polish step, resulting in ''higher corrosion rates'' reported than before.

The JSAE suggested the following additional procedures: taking more time for abrading with the ''No. 1200 papers'' after the ''No. 320 paper;'' and adding several steps ''(*i.e.*, by using No. 320, No. 600, No. 800, and No. 1200) between the No. 320 and No. 1200 steps.'' JSAE did not suggest the length of time to be spent abrading, using each of these papers, or the total length of time to be spent using all of these suggested papers.

Continental did not oppose the proposed changes to the Corrosion test, noting that the change from steel wool to silicon paper will not adversely affect the test results and will result in consistent test strip preparation.

Toyota recommended that the current corrosion test be retained, arguing that it is repeatable and reproducible. It stated that it has found that variations in this test are minimal enough that the performance of the brake fluid may be assessed accurately. That company also stated that it has found that the testing variability improvements using the proposed test are unobservable, and submitted data from several tests in support of that position. Toyota argued that changing the test would result in an unnecessary burden on manufacturers.

Shell asked for evidence that use of silicon carbide paper (as proposed in the NPRM) would result in less variability in test results. ABIC recommended that NHTSA ''may want to evaluate other abrading materials before they make a final recommendation.''

In response, NHTSA notes that testing conducted to date with the new test apparatus does not indicate significant changes in test results from previous tests. However, the agency believes the new procedure will improve the enforceability of FMVSS No. 116. Also, the agency does not believe that additional changes in test apparatus will significantly change the test results.

After carefully considering the comments, we have decided to adopt the proposed modification to the corrosion test. We believe this change will produce more consistent test results and thereby improve repeatability and reproducibility.

We note that SAE standards J1703 and J1704 currently specify that the metal strips be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because of the potential for the steel wool to react with some metal strips in a manner that could cause galvanic corrosion to occur. This type of reaction would not occur in a brake system environment and should therefore be avoided in a corrosion test.

While we have considered specifying abrading with 320A paper only, as suggested by Castrol, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. Abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components.

We do not believe it is necessary to specify additional abrading steps, as suggested by JSAE. We believe the new visual requirements for test strip inspection should ensure that the test strips are sufficiently smooth.

While it is possible, as suggested by Clariant, that the test's modification could in some cases result in slightly more corrosion, the available information, including that provided by ABIC, Toyota, and SAEJ, indicates that results from the current and new procedure are comparable. We do not believe this minor test change will cause any manufacturer to have to reformulate or otherwise change its brake fluid.

We do believe, however, that the change will result in less variation of test strip condition prior to testing, thereby improving repeatability and reproducibility. Moreover, by eliminating the use of steel wool, it will address the potential problem of electrolysis. Therefore, we believe it is appropriate to adopt the change as proposed.

III. Statutory Bases for the Final Rule

We have issued this final rule pursuant to our statutory authority. 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 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 deaths and injuries resulting from traffic accidents. 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.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 116. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public

comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following two decisions in this final rule. First, we have decided to remove the evaporation test from FMVSS No. 116. Because the evaporation test was initially adopted into FMVSS No. 116 to meet the need for motor vehicle safety, we indicated in the NPRM that we were concerned that removal of the evaporation test could permit the introduction of inferior brake fluids into the United States market, even if current brake fluid manufacturers would be unlikely to introduce such products.

After reviewing the public comments and upon further consideration of the evaporation test issue, we are persuaded that the evaporation test is unnecessary given changes in brake system designs and in brake fluid formulations since the test was developed, and that other tests in FMVSS No. 116 will prevent the introduction of inferior brake fluids into the United States market. In particular, we noted that the evaporation test dates back to a time when hydraulic brake systems were vented and when brake fluid contained alcohol or castor oil (substances with lower boiling point temperatures than present day brake fluid formulas). Present day brake fluid formulas do not contain alcohol or castor oil. Moreover, FMVSS No. 116 includes other tests, such as the boiling point test, the corrosion test, the water tolerance test, and the stroking test, which will prevent the introduction of inferior brake fluids into the United States market.

Second, after carefully considering the comments, we have decided to adopt the proposed modification to the corrosion test. We believe this change will produce more consistent test results and thereby improve repeatability and reproducibility. We note that the current corrosion test (which is revised in this final rule) of Standard No. 116 is based on an SAE recommended practice. SAE standards J1703 and J1704 currently specify that metal strips used in the corrosion test be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because steel wool has the potential to react with some metal strips in a manner that could cause electrolysis to occur. An electrolytic reaction would not occur in a brake system and should therefore be avoided in a corrosion test. We have changed the SAE recommended procedure as follows. While we considered specifying abrading with 320A paper only, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. We have concluded that since abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components, adding the extra step of abrading the test strips with the 1200 paper would meet the need for motor vehicle safety.

IV. Effective Dates

In the NPRM, we proposed to make the amendments proposed in the NPRM effective one year after publication of a final rule in the **Federal Register**. We received no comments on the effective date issue. Therefore, as proposed in the NPRM, and in accordance with 49 U.S.C. 30111(d) *Effective date of standards,* the provisions in this final rule making changes to the corrosion test take effect one year from the date of publication of this final rule in the **Federal Register**. In this final rule, we have determined that there is no longer a safety need for the evaporation test. Therefore, in order to timely remove cost and regulatory burdens associated with testing for brake fluid evaporation (for which NHTSA has determined there is no longer a safety need), the provisions regarding the evaporation test will be removed sixty days from the date of publication of this final rule in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. It was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' Further, it is not significant for the purposes of the DOT policies and procedures.

This final rule does not affect the stringency of Standard No. 116, but instead improves the repeatability and reproducibility of the existing corrosion test and removes an outdated test that is no longer needed for safety.

Since, in this final rule, we have removed the evaporation test and made only minor changes to the corrosion test, the costs of the final rule are minimal. We estimate that there are five to 10 brake fluid manufacturers that provide brake fluid for the United States market, including OEM and aftermarket brake fluid, and a somewhat larger number of packagers of brake fluid. The brake fluid manufacturers will need to conduct testing to determine that their products meet the new requirements after these amendments become effective. However, the testing costs should not increase significantly because this final rule requires changes in relatively inexpensive test equipment. There may be a slight cost savings, as the brake fluid manufacturers no longer need ensure that their brake fluids meet the evaporation test. For these reasons, the final rule is unlikely to result in any change in the cost of brake fluid.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for this certification is that, as discussed above, the final rule does not affect the stringency of Standard No. 116, but instead removes the standard's evaporation test, to improve enforceability. Cost savings resulting from brake fluid manufacturers no longer having to conduct an evaporation test are unlikely to result in any change in the cost of brake fluid. Therefore, the changes made in this final rule will not have any significant economic impacts on small businesses, small organizations or small governmental jurisdictions.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth 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 will not have substantial direct effects on the States, on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to brake fluid manufacturers, not to the States and local governments.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act (UMRA) 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 $100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this final rule has any retroactive effect. We conclude that it does not have such an effect. Under 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.

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action will not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. 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.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in comments to the docket number cited in the heading of this notice.

J. Executive Order 13045 Economically Significant Rules Disproportionately Affecting Children

Executive Order 13045 (62 FR 19885, April 23, 1997) 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. This regulatory action does not meet either of those criteria.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [5] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. We note that this final rule's removal of the evaporation test from FMVSS No. 116 is consistent with the decision of the SAE Brake Fluids Standards Committee to remove the evaporation test from the SAE standard. We further note that the current corrosion test (which is revised in this final rule) of Standard No. 116 is based on an SAE recommended practice. SAE standards J1703 and J1704 currently specify that metal strips used in the corrosion test be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because steel wool has the potential to react with some metal strips in a manner that could cause electrolysis to occur. An electrolytic reaction would not occur in a brake system and should therefore be avoided in a corrosion test. We have changed the SAE recommended procedure as follows. While we considered specifying abrading with 320A paper only, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. We have concluded that since abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components, we are adding the extra step of abrading the test strips with the 1200 paper.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

[5] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

■ In consideration of the foregoing, 49 CFR part 571 is amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 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 571.116 is amended by:

■ a. Removing and reserving S5.1.8;

■ b. Revising S6.6.3(e);

■ c. Revising in S6.6.4(a), the first and third sentences;

■ d. Removing and reserving S6.8;

■ e. Removing S6.8.1;

■ f. Removing S6.8.2;

■ g. Removing S6.8.3; and

■ h. Removing S6.8.4.

The revisions read as follows:

§ 571.116 Standard No. 116; Motor vehicle brake fluids.

* * * * *

S6.6.3 * * *

(e) *Supplies for polishing strips.* Waterproof silicon carbide paper, grit No. 320A and grit 1200; lint-free polishing cloth.

* * * * *

S6.6.4 * * *

(a) * * * Except for the tinned iron strips, abrade corrosion test strips on all surface areas with 320A silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids) until all surface scratches, cuts and pits visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches) are removed. * * * Except for the tinned iron strips, further abrade the test strips on all surface areas with 1200 silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids), again using a new piece of paper for each different type of metal. * * *

* * * * *

Issued on: November 9, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–25446 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–11875; Notice 2]

RIN 2127–AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on rear impact guards (underride guards). Under the current requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' In response to petitions for rulemaking, the agency issued a notice of proposed rulemaking (NPRM) proposing to allow manufacturers to place the label on the rear impact guard where it may be less exposed to damage, provided that the label does not interfere with the required retroreflective sheeting and is readily accessible for visual inspection. No comments were received. Thus, in this document, the agency is adopting the proposal as set forth in the notice of proposed rulemaking.

DATES: This final rule is effective January 18, 2005.

Petitions: Petitions for reconsideration must be received by January 3, 2005.

ADDRESSES: Petitions for reconsideration should refer to DOT Docket No. NHTSA–2002–11875 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Huntley, Office of Vehicle Safety Standards, (Telephone: 202–366–0029) (Fax: 202–493–2739) (E-Mail: *Michael.Huntley@nhtsa.dot.gov*).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202–366–2992) (Fax: 202–366–3820) (E-Mail: *George.Feygin@nhtsa.dot.gov*).

You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, NHTSA published a final rule establishing two Federal motor vehicle safety standards (FMVSSs) to address the problem of rear underride crashes.[1] Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or ''underrides'' the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck. The final rule established two standards that operate together to reduce the number of injuries and fatalities resulting from underride crashes.

The first standard, FMVSS No. 223, ''Rear impact guards,'' specifies performance requirements that rear impact guards (underride guards) must meet before they can be installed on new trailers. It specifies strength requirements and test procedures that NHTSA uses to determine compliance with those requirements. FMVSS No. 223 also requires the underride guard manufacturer to provide instructions on the proper installation of the guard. Finally, the underride guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the underride guard was manufactured, and the letters ''DOT''. The letters constitute certification by the manufacturer that the underride guard meets all the performance requirements of FMVSS No. 223. The standard requires manufacturers to place the label on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard, so that, as the guard is mounted on the vehicle, the label will be readily visible to Federal Motor Carrier Safety Administration (FMCSA) inspectors.

The second standard, FMVSS No. 224, ''Rear impact protection, requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more to be equipped with an underride guard meeting FMVSS No. 223. FMVSS No. 224 specifies requirements regarding the location of the underride guard relative to the rear of the trailer. It also requires that the underride guard be mounted on

[1] *See* 61 FR 2003.

the trailer in accordance with the instructions of the guard manufacturer.

Both standards became effective on January 26, 1998.

II. Petitions

On December 10, 1998, NHTSA received a petition for rulemaking from the Truck Trailer Manufacturers Association (TTMA) requesting that the agency amend FMVSS No. 223 by eliminating the underride guard labeling requirement.[2] TTMA argued that requiring a label on the underride guard is redundant for trailer manufacturers that manufacture their own guards because trailer manufacturers are already required to place a label on their trailers to certify their compliance with all FMVSSs.[3]

On December 30, 1998, NHTSA received a similar petition from the American Trucking Associations (ATA),[4] and on January 18, 1999, another petition from Compass Transportation, Inc.[5] Both petitioners argued that the underride guard labeling requirement is redundant and requested that the agency eliminate the labeling requirement from FMVSS No. 223.

TTMA requested that if NHTSA declined to eliminate the guard labeling requirement, the agency should instead eliminate the requirement that the guard be labeled permanently. TTMA argued that it is unlikely that any label will remain on the guard for the life of the trailer. As a final alternative, TTMA requested that NHTSA allow manufacturers the flexibility to place the label where it may be the least exposed to damage from operational and environmental factors.

III. Notice of Proposed Rulemaking

NHTSA published an NPRM responding to the three petitions for rulemaking on March 29, 2002.[6]

A. Guard Labeling Requirement

In the NPRM, the agency denied the petitioners' request to eliminate the labeling requirement. The agency reasoned that the separate equipment (FMVSS No. 223) and vehicle (FMVSS No. 224) standards allow a trailer manufacturer to install an underride guard produced by a guard manufacturer rather than by the trailer manufacturer itself. This regulatory scheme allows the trailer manufacturers to avoid the cost of developing compliant underride guards by purchasing pre-certified underride guards from underride guard manufacturers.

In order to facilitate enforcement, NHTSA uses the guard certification label to determine whether an underride guard was manufactured and certified by the trailer manufacturer or purchased from an underride guard manufacturer who certified the guard prior to selling that item of equipment to the trailer manufacturer. If NHTSA did not require the underride guards to be labeled, our enforcement personnel would not be able to conclude readily which party certified an underride guard to the requirements of FMVSS No. 223.[7]

Finally, the agency said that it did not believe that affixing the required label is a significant burden.

B. Permanency Requirement

In the NPRM, the agency also denied petitioners' request to eliminate the requirement that the guard label be permanent. The agency acknowledged that the permanency of the label is not significant for the purpose of NHTSA's compliance testing, since the agency only tests new guards for compliance with FMVSS No. 223. However, the agency noted that the Federal Highway Administration (FHWA) recently amended its rear impact regulations to make them consistent with Standard Nos. 223 and 224.[8] [9] The FHWA included a requirement for a permanent label, in part, ''to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.'' [10]

NHTSA also reasoned that Standard No. 223 does not specify a particular means (*i.e.*, labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Finally, the agency noted that none of the petitioners had provided any information documenting any problems trailer or guard manufacturers have experienced in meeting the requirement for a permanent label.

C. Label Location Requirement

In the NPRM, the agency granted the petitioners' request to commence rulemaking to allow manufacturers to place the label where it may be least exposed to damage. The agency stated that the precise location of the guard label is of little significance to NHTSA personnel conducting compliance testing on new guards. Further, the agency stated that FMCSA representatives had indicated to NHTSA that the specific location of the guard label is not critical to trailer inspectors, so long as it is located somewhere on the horizontal member of the guard.

However, to ensure that the label would not be hidden or obscured, the agency proposed to require that the label remain readily accessible for visual inspection, so that trailer inspectors would not have difficulty locating it.

Finally, the agency proposed to require that the label not interfere with retroreflective sheeting placed across the full width of the rearward facing surface of the horizontal member of the underride guard, as required by S5.7.1.4.1(c) of FMVSS No. 108.

Accordingly, the agency proposed to revise the third sentence of S5.3 of Standard No. 223 to read as follows:

''The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.''

IV. Final Rule

In the NPRM, NHTSA specified a 60-day comment period. The agency did not receive any comments on the proposal. Accordingly, the agency is adopting the proposal as set forth in the NPRM.

V. Costs and Benefits

This final rule will not result in any additional cost burdens on any regulated parties and will not produce additional safety benefits.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This

[2] *See* Docket No. NHTSA–1998–4367–24 at *http://dms.dot.gov/search/searchFormSimple.cfm*.

[3] 49 CFR 567.4(g)(5) requires manufacturers to affix to trailers a label containing the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.''

[4] *See* Docket No. NHTSA–1998–4376–2.

[5] *See* Docket No. NHTSA–1998–3342–3.

[6] *See* 67 FR 15154 or Docket No. NHTSA–2002–11875.

[7] Under 49 U.S.C. 30118–30120, the manufacturer of a noncompliant item of motor vehicle equipment must recall that product to bring it into compliance at no charge to the customer. In addition, this manufacturer may become subject to civil penalties. Accordingly, it is in the best interest of trailer manufacturers to affix the label that would identify the party responsible for manufacturing a noncomplying product.

[8] *See* 64 FR 47703 (September 1, 1999).

[9] This aspect of the former FHWA jurisdiction is now under FMCSA.

[10] *See* 63 FR 26759, (May 14, 1998).

final rule was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The agency concludes that the expected impact of the final rule is so minimal that the final rule does not warrant preparation of a full regulatory evaluation. This rulemaking will not impose any new requirements or costs on manufacturers. Instead, this rulemaking allows more flexibility in the location of the certification label already required by FMVSS No. 223. Accordingly, the final rule will not result in any additional costs burdens on the manufacturer of underride guards or trailers equipped with underride guards.

This rulemaking is not the subject of significant Congressional or public interest.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking does not impose any new requirements or costs on manufacturers. Instead, this rulemaking allows more flexibility in the location of the certification label already required by FMVSS No. 223. Accordingly, the final rule will not result in any additional costs burdens on the manufacturer of underride guards or trailers equipped with underride guards.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that the implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in the Executive Order 13132, and has determined that this rulemaking does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. This final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule is not intended to preempt state tort civil actions.

E. Civil Justice Reform

This amendment will not have any retroactive effect. Under 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.

F. 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 final rule does not have any new requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320.

G. 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 NHTSA to use voluntary consensus standards in its 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 NHTSA to provide Congress, through the OMB, explanations when it decides not to use available and applicable voluntary consensus standards.

There are no applicable voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. 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 $100 million annually ($120,700,000 as adjusted for inflation with base year of 1995).

This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $120,700,000 annually.

I. Regulation Identifier Number

The Department of Transportation assigns a regulatory 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. 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://www.dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

■ 1. The authority citation for part 571 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 571.223 is amended by revising the third sentence of S5.3 introductory text as follows:

§ 571.223 Standard No. 223; Rear impact guards.

* * * * *

S5.3 Labeling. * * * The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label

does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

* * * * *

Issued: November 12, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–25704 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–19033]

RIN 2127–AI56

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Final Rule

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard No. 224, ''Rear impact protection'' (FMVSS No. 224), to exclude road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers) from the requirements of the standard. The RCC horizontal discharge trailers are used in the road construction industry to deliver asphalt to construction sites and gradually discharge asphalt mix into the paving machines overlaying the road surface. The agency has concluded that installation of the rear impact guards, as required by FMVSS No. 224, on RCC horizontal discharge trailers would interfere with their intended function and is therefore impracticable due to the unique design and purpose of these vehicles.

DATES: *Effective Date:* This rule is effective December 20, 2004.

Petitions: Petitions for reconsideration must be received by January 3, 2005.

ADDRESSES: Petitions for reconsideration should refer to DOT Docket No. NHTSA–2004–19033 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Huntley, Office of Vehicle Safety Standards, (Telephone: 202–366–0029) (Fax: 202–493–2739) (E-Mail: *Michael.Huntley@nhtsa.dot.gov*).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202–366–2992) (Fax: 202–366–3820) (E-Mail: *George.Feygin@nhtsa.dot.gov*).

You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Notice of Proposed Rulemaking
III. Summary of Comments
IV. Agency Analysis and Decision
A. Impracticability
B. Alternative Methods of Compliance and Alternative Vehicles
1. Special purpose vehicles and wheels back trailers
2. Use of dump trucks instead of RCC Horizontal discharge trailers
C. Safety Consequences
D. Statutory Mandate to Ensure Practicability of Safety Standards
E. Request to Exempt Gravity Feed Dump Trailers
V. Estimated Costs and Benefits
VI. Rulemaking Analyses and Notices

I. Background

Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or ''underrides'' the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI crashes can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck.

In an attempt to reduce the frequency and severity of underride collisions, NHTSA issued FMVSS No. 224.[1] The standard requires that all new trailers and semitrailers with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or more be equipped with a rear impact guard (underride guard). The underride guard is attached to the rear of the trailer (within 12 inches [305 mm] of the rear extremity of the vehicle) and acts to prevent the light vehicle from sliding under the trailer chassis.

The RCC horizontal discharge trailer is a unique piece of equipment used in the road construction industry to deliver asphalt and other building materials to a construction site. The trailer is equipped with a mechanical drive and a horizontal conveyor, which gradually discharges asphalt mix into a paving machine overlaying the road surface with asphalt material.

With respect to FMVSS No. 224, the RCC horizontal discharge trailer's most unique and technologically problematic feature stems from the fact that the rear of the trailer is designed to connect with and latch onto various paving machines. Typically, the paving machine attaches to the rear axle of the RCC horizontal discharge trailer via hydraulic arms, and the edge of the trailer's conveyor belt extends over the paving machine opening. An underride guard required by FMVSS No. 224 would prevent the RCC horizontal discharge trailer from effectively connecting with a paving machine.

Connection with paving equipment is critical to the road construction process as it allows the RCC horizontal discharge trailer to deposit asphalt mix directly into the paving machine hopper. This method also allows for a more controlled off-loading, as compared to a dump trailer, which is the other type of vehicle capable of delivering asphalt mix to road construction sites.[2]

This rulemaking was initiated by a joint petition on behalf of Dan Hill & Associates, Inc. (Dan Hill), and Red River Manufacturing, Inc., a Division of Trail King Industries, Inc. (Red River).[3] Dan Hill and Red River are manufacturers of RCC horizontal discharge trailers. Their petition requested that the agency amend FMVSS No. 224 to ''exclude construction controlled horizontal discharge semitrailers from the scope of the standard.'' Since the effective date of the standard,[4] Dan Hill and Red River have each received a temporary exemption from the requirements of FMVSS No. 224, in part because of the impracticability of installing underride guards on RCC horizontal discharge trailers.[5]

FMVSS No. 224 currently excludes pole trailers, pulpwood trailers, wheels

[1] *See* 61 FR 2004, January 24, 1996.

[2] Because the horizontal discharge trailers do not rise to unload their contents like steel end dump trailers, they can be used on uneven terrain or where overhead obstructions such as bridges and power lines completely prevent the use of dump trailers.

[3] *See* Docket No. NHTSA–2001–8876–4.

[4] FMVSS No. 224 became effective January 26, 1998; *see* 61 FR 2004 (January 24, 1996).

[5] The temporary exemptions were based or the ''substantial economic hardship'' grounds under 49 CFR 555.6(a). Nevertheless, the economic hardship was rooted in impracticability of installing underride guards. Both exemptions have since been renewed. *See* 68 FR 28880 (May 27, 2003).

back trailers, and ''special purpose vehicles'' because attachment of an underride guard to these specific vehicles is either impracticable or unnecessary.[6] For example, in the case of a wheels back trailer, the rear axle is located within 12 inches of the rear extremity of the vehicle. Because the rear wheels are located so close to the rear extremity of the vehicle, they act as an underride guard, making underride virtually impossible.

The RCC horizontal discharge trailers subject to this notice do not fit the current definition of special purpose vehicles. Because of their unique design necessitated by their interactions with the paving machines, a practicable RCC horizontal discharge trailer is also ill suited for a wheels back design exception. In sum, the RCC horizontal discharge trailers do not fall under any exclusion currently available in FMVSS No. 224. At the same time, complying with the standard is impracticable due to the unique design and purpose of these vehicles.

In their March 23, 2001 joint petition, Dan Hill and Red River requested that NHTSA amend FMVSS No. 224 to exclude construction controlled horizontal discharge trailers from FMVSS No. 224. According to the petitioners, the two parties together account for virtually all of RCC horizontal discharge trailer manufacturing. Approximately 0.12% of all trailers produced in the U.S. are RCC horizontal discharge trailers. Both manufacturers claim to have been unsuccessful in their independent efforts to develop an underride guard that is compliant, functional, and capable of interfacing with road-building equipment with which these vehicles are designed to work. A discussion of these various attempts is provided below. Based on their attempts to manufacture a compliant trailer that remains functional and safe under real world operating conditions, petitioners believe that bringing RCC horizontal discharge trailers into compliance with FMVSS No. 224 is not practically feasible. Both manufacturers stated failure to amend the standard would effectively terminate production of RCC horizontal discharge trailers unless petitioners continued to receive temporary exemptions.

[6] ''Special purpose vehicle'' means a trailer or a 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. *See* 49 CFR 571.224. Examples of special purpose vehicles are dump trailers, auto transporters, and trailers equiped with lift gates.

II. Notice of Proposed Rulemaking

On September 19, 2003, NHTSA published a Notice of Proposed Rulemaking to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224.[7]

In the NPRM, we described the apparent difficulty associated with installing underride guards on RCC horizontal discharge trailers without interfering with their intended function. We stated that, based on the joint petitions for rulemaking and previous petitions for temporary exemptions, there did not appear to be a practicable solution that would bring RCC horizontal discharge trailers in compliance with FMVSS No. 224. Accordingly, NHTSA proposed to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224 by adding RCC horizontal discharge trailers to the list of excluded vehicles in S3 of the Standard.

To ensure that the standard excluded only the specific type of the vehicles discussed in this notice, we proposed the following definition of RCC horizontal discharge trailers:

> ''a trailer or semitrailer that is equipped with a mechanical drive and a conveyor to deliver asphalt and other road building materials, in a controlled horizontal manner, into a lay down machine or paving equipment for road construction and paving operations.''

In order to better understand practicability issues associated with bringing RCC horizontal discharge trailers in compliance with FMVSS No. 224, the agency asked for comment on the following questions:

1. Is a wheels back design a practical vehicle design alternative for RCC horizontal discharge trailers?
2. What is the maintenance and performance history of RCC horizontal discharge trailers with wheels back design?
3. Is a retractable underride guard design a practical solution for RCC horizontal discharge trailers? Does such a design create a risk of injury to workers operating or working near the trailer?
4. What is the maintenance and performance history of RCC horizontal discharge trailers with retractable underride guards?
5. Has any manufacturer of RCC horizontal discharge trailers subject to this notice been able to alternatively design a compliant vehicle equipped with an underride guard, that is able to slide over the paving machine in order to discharge asphalt mix?

[7] *See* 68 FR 54879.

III. Summary of Comments

The agency received 24 comments in response to the September 19, 2003 NPRM. Specifically, we received three comments from RCC horizontal discharge manufacturers; seventeen comments from road construction companies; two comments from Associated General Contractors of America, a comment from a RCC horizontal discharge trailer reseller; and a comment from a gravity feed dump trailer manufacturer.

All comments supported the proposed amendment to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224. Several commenters emphasized impracticability issues associated with installing underride guards on RCC horizontal discharge trailers. Other comments from the road construction companies indicated their preference for horizontal discharge trailers over dump trucks. One commenter urged the agency to exclude gravity feed dump trailers in addition to RCC horizontal discharge trailers.

IV. Agency Analysis and Decision

Based on our consideration of the comments and other available information, the agency is issuing this final rule to amend FMVSS No. 224 to exclude RCC horizontal discharge trailers from the requirements of the standard. The basis for our decision is discussed below.

A. Impracticability

Manufacturing a RCC horizontal discharge trailer to accommodate an underride guard has proven impracticable because the rear of the trailer is designed to connect with paving equipment. As previously discussed, the paving machine typically attaches to the rear axle of an RCC horizontal discharge trailer via hydraulic arms, and the edge of the trailer's conveyor belt extends over the paving machine opening. This configuration is critical to the road construction process as it allows the RCC horizontal discharge trailer to deposit asphalt mix directly into the paving machine hopper. A fixed underride guard prevents paving machines from interfacing with (locking onto) the RCC horizontal discharge trailer during the paving operations.[8]

In the NPRM, we detailed petitioners' independent efforts to develop an underride guard that is compliant, safe under real-world operating conditions, and capable of interfacing with road-

[8] *See* comments from Mayo Construction Co., NHTSA–2003–14396–16.

building equipment with which these vehicles are designed to work.

First, petitioners considered installing a retractable underride guard that would be engaged when the RCC horizontal discharge trailer travels to and from the actual construction sites, and retracted when the RCC horizontal discharge trailer is attached to the paving machine. However, designing a retractable underride guard suitable for this application has proven impractical for several reasons, chiefly among them the lack of adequate clearance. The edge of the RCC horizontal discharge trailer must extend over the paving machine in order to drop the hot asphalt mix into the hopper. Because paving machines differ in size and configuration, the trailer must allow for paving machines of different heights to slide under the conveyor structure. Typically, the paving machine openings are 31 to 35 inches off the ground. Conveyor structures of the RCC horizontal discharge trailers are normally 36 to 37 inches off the ground. As a result, the underride guard has to retract completely against the conveyor structure, in order to not interfere with the paving machine. Achieving such ''flush'' retraction has not proven feasible. Additionally, raising the overall ground clearance of the RCC horizontal discharge trailer in order to provide adequate clearance for a retractable underride guard would raise the center of gravity of the trailer, possibly making the vehicle more prone to rollovers.

Another difficulty in installing a retractable underride guard involves the location of a planetary gearbox that drives the conveyor system. The gearbox is located where a retractable underride guard system would otherwise be located. Further, asphalt accumulations on the underride guard cause certain maintenance problems, which have not yet been solved. Specifically, a retractable underride guard has mating surfaces that slide over each other. These surfaces would be under constant exposure to hot asphalt, which would result in mating surfaces sticking to each other. The hot mix asphalt materials that adhere to the guard surface may render it ineffective and may pose a risk of injury to the truck or machine operator.

In response to the NPRM, we received several comments on the practicability of a retractable underride guard. Ace Asphalt Paving Co., Keeler Construction Co., Rose's Enterprises and EDW. C. Levy Co. all stated that a retractable guard will result in increased cost and would increase the risk of an injury associated with employees being too close to the guard as it is being retracted or lowered. Red River reiterated that a retractable guard could pose a risk to construction workers because asphalt buildup would jam the retraction mechanism.

Additional efforts by the petitioners to bring their product into compliance with FMVSS No. 224 have similarly failed. Specifically, petitioners considered adding removable underride guards. They rejected this approach because of concerns that workers would fail to replace the underride guard before transit.

The agency did not receive comments directly addressing removable underride guards. Nevertheless, the agency continues to believe that removable underride guards are not a practicable solution. Because the standard applies only to new vehicles, this design approach would allow RCC horizontal discharge trailer manufacturers to meet FMVSS No. 224. However, given the inconvenience associated with continually removing and reinstalling a removable guard, it is likely that at some point the guard would be removed permanently. This scenario is inconsistent with the overall intent of the standard, which is to reduce the likelihood of underride collisions on U.S. highways.

Therefore, the agency concludes that installing underride guards on RCC horizontal discharge trailers is impracticable.

B. Alternative Methods of Compliance and Alternative Vehicles

1. Special Purpose Vehicles and Wheels Back Trailers

As previously discussed, S.3 of FMVSS No. 224 contains certain exceptions to the requirements of the standard. Specifically, ''wheels back'' trailers, and ''special purpose vehicles'' need not comply with FMVSS No. 224 because attachment of an underride guard to these specific vehicles is either impracticable or unnecessary. Neither exception applies to RCC horizontal discharge trailers.

A special purpose vehicle is defined as ''* * * a trailer or a 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'' [9] Examples of special purpose vehicles are auto transporters, and certain trailers equipped with lift gates.

The RCC horizontal discharge trailers subject to this rulemaking do not fit the current definition of special purpose vehicles, notwithstanding their unique nature and their work-performing equipment, because technically, their work-performing equipment does not move through or reside in the area in which the underride guard would be attached.

Wheels back trailer are equipped with a rear axle that is located within 305 mm (12 inches) of the rear extremity of the vehicle. Because the rear wheels are located so close to the rear extremity of the vehicle, they act as an underride guard, making PCI virtually impossible.

Because of the unique design necessitated by their interactions with the paving machines, a practicable RCC horizontal discharge trailer is ill-suited for a wheels back design. As previously mentioned, a RCC horizontal discharge trailer is designed to extend over a paving machine in order to drop the hot asphalt mix into the hopper. A rear axle located within 12 inches of the rearmost extremity would prevent the trailer from properly extending over the paving machine. In fact, several commenters confirmed that a RCC horizontal discharge trailer with a rear axle located within 12 inches of the rearmost extremity is unacceptable. For instance, Barre Stone Products, Inc. (Barre) stated that a 33-inch overlap between the RCC horizontal discharge trailer and the paving machine is necessary to ensure proper interaction between the hopper and the trailer, and to prevent spillage of asphalt material. Barre further noted that the wheels back design would not allow for proper articulation between the RCC horizontal discharge trailer and the paving machine at the point where they are joined. Accordingly, the agency concludes that wheels back design does not provide for a practicable solution for compliance with FMVSS No. 224.

In sum, RCC horizontal discharge trailers do not fall under any preexisting exclusions to the requirements of FMVSS No. 224 and cannot be effectively altered to fit these exclusions.

2. Use of Dump Trucks Instead of RCC Horizontal Discharge Trailers

In evaluating available alternatives, NHTSA also considered the implications of not exempting RCC horizontal discharge trailers from the requirements of FMVSS No. 224. If RCC horizontal discharge trailers were no longer available to the road construction industry, the industry would have to rely on dump trucks to deliver asphalt to the construction sites. In the NPRM we stated that RCC horizontal discharge trailers appear to allow for a more controlled off-loading, as compared to a

[9] *See* S4 of 49 CFR § 571.224.

dump truck, which tends to discharge large quantities of asphalt mix instantly. A more controlled offloading not only prevents spillage of asphalt and other debris on the road surfaces, but also ensures a more leveled road surface construction. Furthermore, dump trucks may not be able to operate in situations where overhead obstructions such as bridges and power lines prevent raising the bed to unload asphalt materials.

In response to the NPRM, the agency received several comments from the road construction industry indicating their preference for RCC horizontal discharge trailers over dump trucks. Specifically, Central Specialties, Inc., and Las Vegas Paving Corp., stated that RCC horizontal discharge trailers are preferable to dump trucks because they allow for a more controlled delivery of asphalt, thus reducing the instances of spills and accidents on job sites. Further, RCC horizontal discharge trailers reduce or prevent asphalt material segregation during delivery. This makes road construction material more durable, resulting in better roads. By contrast, dump trucks cannot prevent asphalt material segregation, leading to a degradation in the quality of asphalt during transit. Manatt's Inc., and Mayo Construction, Co., noted that dump trucks are ineffective in delivering asphalt to uneven ground areas and present a serious safety hazard in areas with overhead power lines.

Based on the industry comments confirming the benefits of utilizing RCC horizontal discharge trailers in certain road construction operations, the agency concludes that dump trucks do not always present a viable alternative to RCC horizontal discharge trailers and cannot effectively replace them in all circumstances.

C. Safety Consequences

The agency has examined the possible safety consequences of excluding RCC horizontal discharge trailers from FMVSS No. 224. We note that RCC horizontal discharge trailers travel on U.S. highways only infrequently, in order to deliver the hot asphalt mix to the road construction sites. These vehicles spend most of their time in a controlled environment of a construction site, surrounded by paving machines and construction traffic control equipment (*e.g.* traffic cones, safety signs), where a risk of underride collision is virtually nonexistent.[10] Further, only a very small number of all trailers (approximately 0.12%) produced in the U.S. are RCC horizontal discharge trailers. Accordingly, the agency concludes that the risk of a severe underride collision with an RCC horizontal discharge trailer is substantially lower than that of other vehicles subject to FMVSS No. 224.

D. Statutory Mandate To Ensure Practicability of Safety Standards

When prescribing a motor vehicle safety standard, NHTSA is required to ensure that the standard is reasonable, practicable, and appropriate for the particular type of motor vehicle equipment for which it is prescribed (49 U.S.C. 30111(b)(3)). As discussed above, NHTSA has concluded that installing underride guards on RCC horizontal discharge trailers is impracticable. Further, comments from the road construction industry confirm that it is similarly impracticable to design an RCC horizontal discharge trailer that would fall under the existing wheels back exception. Therefore, the agency concludes that it is appropriate to exclude RCC horizontal discharge trailers from FMVSS No. 224.

E. Request To Exempt Gravity Feed Dump Trailers

In response to the NPRM, we received a comment from Reliance Trailer Co. (Reliance), requesting that NHTSA amend the definition of an RCC horizontal discharge trailers to include gravity feed dump trailers. Reliance is a trailer manufacturer specializing in gravity feed dump trailers for the use in road construction industry.[11] After carefully considering Reliance's request, NHTSA declines to exclude gravity feed dump trailers from the requirements of the standard.

A RCC horizontal discharge trailer is a single-purpose vehicle designed to deliver and discharge asphalt materials into paving equipment in a controlled manner. Unlike the RCC horizontal discharge trailers, gravity feed dump trailers are versatile vehicles used for a multitude of tasks. Often, gravity feed dump trailers are used in a way that does not require controlled offloading or interaction with other equipment such as paving machines. Further, many gravity feed dump trailers fall under wheels back exception. Others can easily accommodate an underride guard.

Because it is not impracticable for *all* gravity feed dump trailers to comply with FMVSS No. 224, the agency prefers to review the necessity of exempting gravity feed dump body trailers within the context of temporary exemptions pursuant to 49 CFR Part 555. In certain limited circumstances, the agency grants temporary exemptions to gravity feed dump trailer manufacturers based, in part, on impracticability of compliance. In fact, several gravity feed dump trailer manufacturers, including Reliance, have previously received exemptions from FMVSS No. 224.[12]

The agency notes that gravity feed dump trailers are more common and represent a larger vehicle population compared to RCC horizontal discharge trailers. Accordingly, we are concerned that exempting a larger vehicle population from the requirements of the standard may lead to negative safety consequences exceeding those associated with exempting only the RCC horizontal discharge trailers. Because of a larger vehicle population and because of their versatility of use, the agency cannot conclude that a risk of an underride collision with a gravity feed dump trailer is negligible. Finally, we note that Reliance's request is outside the scope of the NPRM, and this rulemaking action cannot exempt other types of vehicles from the requirements of FMVSS No. 224 without further notice.

V. Estimated Costs and Benefits

This final rule will not result in any additional cost burdens on any regulated parties. Exclusion of RCC horizontal discharge trailers from the requirements of FMVSS No. 224 will benefit RCC horizontal discharge trailer manufacturers and members of the road construction industry utilizing these vehicles because RCC horizontal discharge trailer manufacturers would not have to expend further financial resources in attempting to bring RCC horizontal discharge trailers into compliance with FMVSS No. 224.

The cost benefits associated with this final rule will result from the petitioners' and other third parties' ability to continue manufacturing and marketing their products. Currently, petitioners' ability to offer RCC

[10] Neither Fatal Analysis Reporting System (FARS), the National Automotive Sampling System (NASS), nor the General Estimates System (GES) data files that we have examined include crash information pertaining specifically to horizontal discharge trailers. We have examined underride and horizontal discharge trailer information from hard copies of police accident reports (PARs) for 74 selected 1999–2001 FARS cases and 75 cases from the 1999–2001 NASS on-line summary files. A careful examination of photographs (where available) and other related information yielded no indication of rear end collisions involving horizontal discharge trailers.

[11] On June 1, 2004 NHTSA granted Reliance a temporary exemption from FMVSS No. 224 based on substantial economic hardship, and in part, on impracticability of compliance with the standard. For detail on the exemption, please *see* 69 FR 30989.

[12] *See* 68 FR 7406 (February 13, 2003), exempting Columbia Body Manufacturing Co. from FMVSS No. 224.

horizontal discharge trailers depends on temporary exemptions. Further, E.D. Etnyre & Co. and other manufacturers who may have suffered sale volume losses as a result of offering a wheels back or other designs unpopular with typical RCC horizontal discharge trailer purchasers, may once again gain market share by offering a product that is more suitable to the industry needs. The actual costs savings to RCC horizontal discharge trailer manufacturers are difficult to estimate because petitioners have not been able to produce a viable underride guard for the equipment in question.

We also anticipate certain cost savings by members of the road construction industry based on their comments stating their preference of RCC horizontal discharge trailers to dump trailers. Road construction industry costs savings are not quantified because road construction companies did not submit data sufficient to enable NHTSA to create an actual cost estimate.

There are no safety benefits associated with this proposed rulemaking. As discussed in Section IV, however, we anticipate that because of very limited production, and similarly limited highway use exposure, there are minimal safety disbenefits associated with this final rule.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This final rule was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The agency concludes that the expected impact of the final rule is so minimal that the final rule does not warrant preparation of a full regulatory evaluation. This rulemaking will not impose any new requirements or costs on manufacturers. Instead, this rulemaking exempts RCC horizontal discharge trailer manufacturers from the requirements of FMVSS No. 224. Accordingly, the final rule will result in cost savings to manufacturers of RCC horizontal discharge trailers, and road construction companies purchasing these vehicles.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking does not impose any new requirements or costs on manufacturers. Instead, the final rule excludes manufacturers of RCC horizontal discharge trailers from the requirements of FMVSS No. 224. The manufacturers of RCC horizontal discharge trailers, among them Dan Hill, Red River, and E.D. Etnyre & Co. will realize certain cost savings because the standard will no longer require them to install underride guards on their RCC horizontal discharge trailers. However, because of the relatively small number of RCC horizontal discharge trailers produced yearly, any potential positive economic impact will not be significant. Accordingly, this amendment will not significantly affect small businesses, small organizations, or small governmental units. For these reasons, the agency has not prepared a final regulatory flexibility analysis.

C. 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 final rule does not contain any collection of information requirements subject review under the Paperwork Reduction Act.

D. National Environmental Policy Act

NHTSA has analyzed this final rule under the National Environmental Policy Act and determined that it would not have a significant impact on the quality of human environment.

E. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in the Executive Order 13132, and has determined that this rulemaking does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. This final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule is not intended to preempt state tort civil actions.

F. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 21403, 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. 21461 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.

G. 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 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.

The agency searched for, but did not find any voluntary consensus standards relevant to this final rule.

H. 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 $100 million annually ($120,700,000 as adjusted for inflation with base year of 1995).

This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $120,700,000 annually.

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 (62 FR 19885, April 23, 1997) 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 subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children.

K. 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.*

L. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 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.

List of Subjects in 49 CFR Part 571

Motor vehicle safety standards.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571.224 as set forth below.

■ 1. The authority citation for part 571 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 S3 and by adding the definition of ''Road construction controlled horizontal discharge trailer'' in alphabetical order to S4 to read as follows:

§ 571.224 Standard No. 224; Rear Impact Protection.

* * * * *

S3. Application. This standard applies to trailers and semitrailers with a GVWR of 4,356 kg or more. The standard does not apply to pole trailers, pulpwood trailers, road construction controlled horizontal discharge trailers, special purpose vehicles, wheels back vehicles, or temporary living quarters as defined in 49 CFR 529.2. If a cargo tank motor vehicle, as defined in 49 CFR 171.8, is certified to carry hazardous materials and has a rear bumper or rear end protection device conforming with 49 CFR part 178 located in the area of the horizontal member of the rear underride guard required by this standard, the guard need not comply with the energy absorption requirement (S5.2.2) of 49 CFR 571.223.

S4. Definitions.

* * * *Road construction controlled horizontal discharge trailer* means a trailer or semitrailer that is equipped with a mechanical drive and a conveyor to deliver asphalt and other road building materials, in a controlled horizontal manner, into a lay down machine or paving equipment for road construction and paving operations.

* * * * *

Issued: November 12, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–25703 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 111504A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 24,404 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004). NMFS closed the directed fishery for Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on September 10, 2004 (69 FR 55361, September 14, 2004), and reopened it on September 28, 2004 (69 FR 58367, September 30, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,304 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–25738 Filed 11–16–04; 3:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 223
Friday, November 19, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, and 1007

[Docket No. AO–388–A16, AO–356–A38, and AO–366–A45; DA–04–07]

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; final decision.

SUMMARY: This document proposes to adopt, on an emergency basis, amendments to the Appalachian, Florida, and Southeast Federal milk marketing orders. Specifically, the proposed amendments will implement a temporary supplemental charge on Class I milk that will be disbursed to handlers who incurred transportation costs for bulk milk movements for the Appalachian, Florida, and Southeast orders resulting from hurricanes Charley, Frances, Ivan and Jeanne. The proposed amendments are based on record evidence of a public hearing held in Atlanta, Georgia, on October 7, 2004. This decision requires determination of whether producers approve the orders as proposed to be amended.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *antoinette.carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 2004, the most recent representative month, the milk of 7,239 dairy farmers was pooled under the Appalachian (Order 5), Florida (Order 6), and Southeast (Order 7) milk orders (3,400 Order 5 dairy farmers, 267 Order 6 dairy farmers, and 3,572 Order 7 dairy farmers, respectively). Of the 7,239 dairy farmers, 80 percent met the definition of small business. Specifically, the number of dairy farmers considered small businesses for Order 5, Order 6, and Order 7 were 3,230 or 95 percent, 134 or 50 percent, and 3,407 or 95 percent, respectively. During the same period, there were 65 fully regulated plants under Orders 5, 6, and 7. Of the 65 plants, 7 were considered small businesses. Specifically, there were 25 Order 5 plants (of which 2 were small businesses), 12 Order 6 plants (of which 3 were small businesses), and 28 Order 7 plants (of which 2 were small businesses).

The proposed amendments adopted in this final decision will provide temporary reimbursement to handlers (cooperative associations and proprietary handlers) who incurred extraordinary transportation expenses for bulk milk movements resulting from the impact of hurricanes Charley, Frances, Ivan, and Jeanne on the Southeastern United States, particularly the State of Florida. The proposed amendments were requested by Dairy Farmers of America, Inc., Lone Star Milk Producers, Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc., and Southeast Milk, Inc. The dairy farmer members of these four cooperatives supply the majority of the milk pooled under the Appalachian, Florida, and Southeast orders. The proposed amendments adopted in this final decision will implement, for a 3-month period beginning January 1, 2005, a supplemental increase in the Class I milk price at a rate not to exceed $.04 per hundredweight of milk in the Appalachian and Southeast orders, and a rate not to exceed $.09 per hundredweight of milk in the Florida order. The amount generated through the Class I milk increase will be disbursed during February 2005 through April 2005 to qualifying handlers who

incurred extraordinary transportation costs as a result of the hurricanes. The reimbursement for extraordinary transportation costs will be disbursed to qualifying handlers on an actual transportation costs basis or at a rate of $2.25 per loaded mile, whichever is less.

The aforementioned hurricanes occurred during a 7-week period of time and disrupted the orderly flow of milk movements in and to the Appalachian, Florida, and Southeast marketing areas. The four hurricanes caused handlers in the southeastern markets, particularly in the Florida marketing area, to experience disruptions in moving bulk milk to supply the Class I (fluid milk) needs of the individual marketing areas.

One of the functions of the Federal milk order program is to provide for the orderly exchange of milk between the dairy farmer and the handler (first buyer) to ensure the Class I needs of the market are met. The record evidence clearly reveals that the movements of bulk milk for Orders 5 and 7, and particularly Order 6 were disrupted due to the hurricanes. Accordingly, the adoption of the proposed amendments will provide temporary transportation cost reimbursement to handlers who incurred additional transportation expenses for bulk milk movements that were disrupted as a result of extraordinary weather conditions in Orders 5, 6, and 7.

The proposed amendments will provide reimbursement to handlers for transportation expenses totaling over $1.6 million for movements of bulk milk due to the hurricanes. The supplemental increase in the minimum price of Class I milk at a maximum rate of $.09 per hundredweight for Order 6 is anticipated to increase the price of a gallon of milk by not more than $0.0078 (*i.e.*, less than 1 cent) during each month of the 3-month period. Likewise, a supplemental increase at a maximum rate of $.04 per hundredweight for Orders 5 and 7 is anticipated to increase the price of a gallon of milk by not more than $0.0034 (*i.e.*, less than 1 cent) during each month of the 3-month period. The estimated impact on the price per gallon of milk was calculated by converting the hundredweight value to gallons using 8.62 pounds of milk per gallon.

Handlers in Orders 5, 6, and 7 should not be placed at a competitive disadvantage because of the temporary and limited supplemental increase in the minimum Class I milk price. The proposed amendments also are not expected to impact the blend price of dairy farmers. Accordingly, the adoption of the proposed amendments should not significantly impact producers or handlers due to the limited implementation period and the minimum increase in the Class I milk price.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). As such, the information collection requirements in this final decision do not require clearance by the Office of Management and Budget (OMB) beyond the currently approved information collections. This final decision will impose only minimal reporting requirements on handlers applying for reimbursement of additional transportation expenses incurred due to the aforementioned hurricanes.

Handlers may submit documents supporting their claims with their monthly handler report of milk receipts and utilization. The primary sources of data that would be required for submission to Market Administrators by handlers applying for transportation cost reimbursement currently are used in most business transactions. These documents include—but are not limited to—invoices, receiving records, bulk milk manifests, hauling billings, and contract agreements. Handlers who have applied for or received transportation cost reimbursement through insurance claims or through any State, Federal, or other programs must submit documentation of such claims of reimbursement to the Market Administrators for Orders 5, 6, and 7. Prior documents in this proceeding:

Notice of Hearing: Issued September 28, 2004; published September 30, 2004 (69 FR 58368).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this final decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Atlanta, Georgia, on October 7, 2004, pursuant to a notice of hearing issued September 28, 2004, and published September 30, 2004 (69 FR 58368).

The material issues on the record of the hearing relate to:

1. Temporary reimbursement for extraordinary transportation costs resulting from hurricanes; and

2. Determination as to whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Temporary reimbursement for extraordinary transportation costs resulting from hurricanes.* This final decision proposes to adopt amendments to the Appalachian, Florida, and Southeast milk orders (Orders 5, 6, and 7) that will implement a temporary increase in the minimum Class I milk price to provide reimbursement to handlers who incurred extraordinary transportation expenses to move bulk milk for Orders 5, 6, and 7, as a result of hurricanes Charley, Frances, Ivan, and Jeanne. The record evidence clearly supports the adoption of the proposed amendments to provide temporary reimbursement to handlers who incurred extraordinary transportation expenses due to the unprecedented occurrence of four hurricanes in the Southeastern United States over a 7-week period and the resulting disruption of bulk milk movements for Orders 5, 6, and 7—particularly for Order 6.

A witness testifying on behalf of Dairy Farmers of America, Inc., Lone Star Milk Producers, Inc., Maryland and Virginia Milk Producers Cooperative Association Inc., and Southeast Milk, Inc., (proponent cooperatives) presented testimony in support of Proposal 1 with certain modifications. The witness said that Proposal 1 seeks to provide emergency relief under the Federal milk order system to help reimburse marketers of milk for extraordinary costs incurred moving bulk milk for Orders 5, 6, and 7, as a result of hurricanes Charley, Frances, Ivan, and Jeanne.

The proponent cooperatives' witness stated that Proposal 1, if adopted, would generate funds for reimbursements for extraordinary transportation costs by increasing the Class I price of milk at a rate not to exceed $.04 per hundredweight in Orders 5 and 7 and at a rate not to exceed $.09 per hundredweight in Order 6 for the period of January 1, 2005, through March 31, 2005. The witness explained that the funds generated through the Class I milk price increase would be disbursed as relief payments to qualifying handlers and cooperative associations in their

capacity as handlers for a period not to exceed February 2005 through April 2005.

The proponent cooperatives' witness testified that during August and September 2004 four hurricanes (Charley, Frances, Ivan, and Jeanne) made landfall in the Southeastern United States causing disorderly and costly movements of bulk milk in the three southeastern marketing areas, particularly having an impact on the Florida order. The proponent cooperatives' witness noted that hurricane Charley made landfall on August 13, 2004, at Cayo Costa, Florida; hurricane Frances made landfall on September 5, 2004, at St. Marks, Florida; hurricane Ivan made landfall on September 16, 2004, at Mobile, Alabama; and hurricane Jeanne made landfall at Stuart, Florida, on September 25, 2004. According to the witness, the disruptions in bulk milk movements actually began several days before the initial landfall of the first major hurricane (Charley), and ended several days after the landfall of the last hurricane (Jeanne).

According to the proponent cooperatives' witness, reimbursement for extraordinary additional transportation costs as advanced in Proposal 1 would be limited to costs incurred as a result of the aforementioned hurricanes. The witness also indicated that certain milk movements occurred preceding landfall of the hurricanes causing milk to be moved out of the way. In addition, the witness pointed out that following each of the hurricanes, replacement milk was required from other origins and these movements should be considered as part of the additional transportation costs incurred by cooperatives resulting from the hurricanes.

According to the proponent cooperatives' witness, if a potential qualified shipment of milk was moved out of the path of the hurricanes and was received at a distributing plant or was sitting at a distributing plant and then shipped to another plant, then the transportation costs incurred should be entitled to reimbursement if such milk was shipped as bulk milk. The witness stated that to date proponent cooperatives have identified extraordinary transportation costs in excess of $1.6 million for bulk milk for Orders 5, 6, and 7. The witness stated that these losses would probably not be recouped from other sources. Therefore, the assistance of the Federal milk marketing order program was sought as a means to provide financial relief for these extraordinary additional transportation costs.

The witness for the proponent cooperatives explained that Dairy Cooperative Marketing Association (DCMA), a marketing agency to which all the proponent cooperatives are members, operates as the over order pricing agency in the Southeastern United States by coordinating between cooperatives the over order prices charged to distributing plant customers located predominantly in the Order 5, 6, and 7 marketing areas. According to the witness, many factors affect over order prices including—but not limited to—levels of over order prices in adjacent marketing areas, cost and availability of bulk and packaged alternative supplies, general price level, and regional and national supply and demand relationships.

The proponent cooperatives' witness stated that one of the goals of DCMA is to reduce Class I milk price volatility to its customers. The witness noted that for the months of August 2004 through October 2004, using the Atlanta total Class I milk prices, the DCMA over order Class I pricing system reduced the volatility on the announced Federal order Class I prices by $.50 per hundredweight.

The proponent cooperatives' witness explained the DCMA over order pricing plan for 2004 using a table that detailed the over order price for Atlanta, Georgia, as follows: (1) For Federal order Class I base prices (Class I price mover) between $12.00 and $14.00 inclusive (3.5 percent butterfat equivalent), the Class I over order price, prior to any applicable fuel cost surcharge shall be $1.45; (2) for each cent the Federal order Class I base price exceeds $14.00, the Class I over order price will be reduced by one cent up to a maximum decrease of $0.50 and; (3) for each cent the Federal order Class I base price is less than $12.00, the Class I over order price will be increased by one cent up to a maximum of $0.50. The table also noted the location adjustments for Class I over order prices in selected cities.

The witness pointed out that for the past years cooperatives in the Southeastern United States have, through DCMA, utilized a structured system of over order prices that increase when Federal milk order Class I milk prices are at lower levels, and conversely, the over order prices decrease when Federal milk order Class I prices are at higher levels. The proponent cooperatives' witness indicated that this practice may continue during January 2005 through March 2005, which is the period when the Class I milk price would be increased if Proposal 1 is adopted. The witness also asserted that providing the generation of revenue and disbursement of relief payments under the Federal milk order program would insure all market participants that the rate of payment is equal for all Class I pool handlers and that the costs paid are accurately associated with the hurricane emergency.

The proponent cooperatives' witness said that the proponents would support a requirement that handlers applying for relief payments for extraordinary costs incurred due to the aforesaid hurricanes submit to the market administrator—along with supporting documents—a statement certifying that as of the application date no relief payments had been received and no relief payments were expected to be received through any other state or Federal programs or insurance claims. The proponent cooperatives' witness asserted that without financial assistance provided through the Class I milk price as developed in Proposal 1, marketers of milk, principally cooperative associations, will bear the cost of these unanticipated and extraordinary milk movements.

The witness for the proponent cooperatives' stressed that all of the additional costs associated with transporting loads of milk should be reimbursed but not to exceed $2.25 per loaded mile. The witness testified that a loaded mile was defined as a one-way hauling cost for milk delivery from the origination point to the destination point. The witness also stated that the $2.25 mileage rate is a common rate being paid for transporting milk and is a reasonable maximum rate for hauling.

The witness expressed the opinion that the decision process should be concluded very rapidly and suggested that delay would not change the result or the additional transportation costs associated with hurricane related events. In addition, the witness was of the opinion that additional transportation costs should include those additional costs incurred by bulk milk shippers transporting milk to plants outside of hurricane affected areas because these plants packaged milk to replace the production of plants that had been closed due to the extreme weather events in the storm affected areas.

The proponent cooperatives' witness and other proponent witnesses indicated that the movement of milk which would qualify for reimbursement should include: (1) Loads of producer milk delivered or rerouted to a pool distributing plant; (2) loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant; (3) loads of

bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant; (4) loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant; and they modified Proposal 1 to include reimbursement for bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants.

The proponent cooperatives' witness and other proponent witnesses testified that storm related rerouting of milk movements should be eligible for reimbursement because they resulted from flooding related road closures, bridge and road washouts, massive power outages, mandatory official evacuation orders, and extended temporary closures of distributing plants-all due to the extreme weather conditions. The witnesses testified that reroutes represent only those portions of milk movements that were other than usual and customary shipping routes from individual shipping points. The witness presented an example of reroutes where bulk milk in Florida on tankers destined for distributing plants was moved out of Florida, parked at a plant lot outside of Florida but not received by the plant, and when the storm had passed the milk was shipped back to distributing plants in Florida for processing.

The proponent cooperatives' witness testified that demonstrated costs are those costs for which documentation, such as bills of lading, truck tickets, truck manifests and driver logs can demonstrate to the satisfaction of milk market administrators that those additional, extraordinary transportation costs occurred. The witness noted that it would be at the sole discretion of the Market Administrator of each order to determine which movements of bulk milk were conducted in the normal course of business and which milk movements were attributable to the four hurricanes and thus should receive reimbursement for extraordinary transportation costs.

In other testimony, the proponent cooperatives' witness explained the methodology used to determine the proposed increases in the Class I price for the Appalachian, Southeast, and Florida milk orders, as advanced in Proposal 1. According to the witness, the extraordinary additional milk transportation costs totaled approximately $1.6 million for the three Federal milk orders, with $102,206 associated with the Appalachian order, $1,139,469 associated with the Florida order, and $370,085 associated with the Southeast order. The witness testified that monthly volume estimates of Class I producer milk were used as quantities in the derivation of the rate of increase in the Class I price applicable for each order as advanced in Proposal 1 as follows: 373 million pounds per month for the Appalachian order, 218 million pounds for the Florida order, and 392 million pounds for the Southeast order. According to the witness, the estimated extraordinary costs incurred in each milk marketing area was divided by the estimated pounds of milk pooled on each order and divided by three to provide a monthly rate for each of three months. The rates based on these calculations for each are: $.0091 per hundredweight per month for the Appalachian order, $.1735 per hundredweight for the Florida order, and $.0315 per hundredweight for the Southeast order, according to the witness. The witness acknowledged that these rates differ markedly from the rates requested for each order, as advanced in Proposal 1 and published in the notice of hearing of this proceeding. The witness stated that the differences were attributable to rapidly changing extraordinary transportation cost information collected for each order and changes in cost allocations between orders as information became more accurately available.

The proponent cooperatives' witness explained that under Proposal 1 the temporary increase for the three consecutive months would set an effective cap on the amount of new Class I revenue which could be generated under the temporary amendments at not more than the demonstrated costs of moving milk because of the four hurricanes. The witness emphasized that the total revenues generated under this system would be limited to the costs incurred so that no marketer of milk would profit from the payment for these defined extraordinary hauling costs, but rather would be reimbursed for incurring the costs. In addition, the blend price to producers under Orders 5, 6, and 7 would not increase since the money collected cannot exceed the money spent, noted the witness.

The proponent cooperatives' witness stated that as proposed Proposal 1 would require handlers applying for the relief payments to prove to the satisfaction of the market administrator that milk movements were extraordinary and a result of the hurricane emergencies. As proposed, two limits would be placed on the payments. First, the total amount of reimbursement of extraordinary transportation costs would be limited to the amount of funds collected under the adjustment to the Class I milk value. If the demonstrated amount exceeded the funds generated from increasing the Class I handler value, then the remaining extraordinary transportation costs would go unpaid. Second, the rate per mile of transportation would be limited to $2.25 per loaded mile. This limit, stated the witness, insures that marketers of milk cannot garner excessive profits by the inflation of hauling costs.

The proponent cooperatives' witness testified that proponent cooperatives would only be eligible for either a transportation credit payment in the Southeast and Appalachian orders or a temporary transportation relief payment within the provisions of Proposal 1. According to the witness, this would eliminate the possibility of ''double dipping'' or receiving double compensation for the same transportation costs.

The proponent cooperatives' witness concluded by indicating that, at the end of the proposed 3-month period, if any funds collected through the supplemental increase in the Class I milk price in each individual marketing area were not disbursed then the remaining amount should be refunded to the Class I handlers in proportion to their contribution in that market. The witness stated that a disbursement of any remaining funds through the producer settlement fund of each individual order would be acceptable but the preference of the proponent cooperatives is that the blend price not be enhanced as a result of their proposal. The witness further stated that Proposal 1 is designed to provide Market Administrators the authority to reduce the rate of increase of the Class I milk price to help ensure no excess funds are available for disbursement.

A witness representing Southeast Milk, Inc. (SMI), testified in support of Proposal 1. The witness stated that SMI is a dairy marketing cooperative comprised of approximately 300 dairy farmer members with about 74 percent of its milk production in Florida, 24 percent in Georgia, and the remaining 2 percent in Alabama and Tennessee. During August 2004, the witness noted that SMI dairy farmer members' milk accounted for about 87.5 percent of the producer milk pooled on the Florida order, and 17.8 million pounds of its dairy farmer members' milk was pooled on the Southeast order.

The witness explained how hurricane Frances caused the most disruption due to its enormous size and slow movement across Florida. The witness stated that unlike past hurricanes, hurricane Frances disrupted the entire state. Also, the witness explained the

extreme precautions taken in response to hurricane Frances were a result of the very recent experience of hurricane Charley during mid-August. Additionally, the witness indicated that the majority of SMI's dairy producers located in Florida were directly or indirectly affected by at least one of these hurricanes.

According to the SMI witness, the Florida Department of Agriculture estimates agriculture losses from hurricanes Charley and Frances will exceed $2.1 billion, excluding the effects of hurricanes Ivan and Jeanne. The witness provided other examples of the disruption caused by these hurricanes indicating that thirty-four of the 36 Florida counties with dairy farms were declared to be eligible for individual assistance by the Federal Emergency Management Agency (FEMA). The witness noted that 144 of the 170 SMI dairy farms, representing almost 88 percent of SMI Florida milk production, are located in counties declared disaster areas as a direct result of the hurricanes. According to the witness, Florida's largest milk producing county, Okeechobee, was declared a disaster area during three of the four hurricanes. The witness testified that at least 700 head of dairy cows, heifers, and calves were killed and the number is increasing daily. In conclusion, the witness estimated that the decline in milk production per cow, due to additional stress cows suffered from the hurricane events, would result in reduced revenue of at least $15 million.

The SMI witness pointed out that during hurricane Frances, approximately 3 million pounds of milk were dumped at farms or from trailers due to excessive milk age or high temperature with a loss value estimated at $540,000. It was the opinion of the SMI witness that the dumping of milk was because milk trucks were not able to reach farms due to high winds, downed power lines and trees blocking roads and farm lanes, and law enforcement officials limiting traffic to only emergency vehicles. Also, Florida based milk haulers avoided hurricane zones or were unable to reach certain destinations due to traffic and roads that were only opened northbound. In addition, the witness testified that all of SMI's milk tankers were filled as temporary storage units.

The SMI witness noted that, if implemented, Proposal 1 would help increase the revenue and income of small businesses. According to the witness, if the proposal is not implemented, SMI members alone would pay for the extraordinary transportation costs incurred in the marketing area. The witness was of the opinion that movements of bulk milk to nonpool plants should be covered under Proposal 1 because milk intended for the Class I market from SMI had to be rerouted to nonpool plants because distributing plants in Florida would not or could not receive milk because of plant closures or suspended operations directly resulting from the hurricanes. The witness testified that the alternative to shipping this Class I milk to nonpool plants was to dump the milk.

The SMI witness concurred with the previous witness that any extra funds collected in the marketing area after all the funds are disbursed should be paid back to the handler who paid those dollars through the producer-settlement fund.

A witness representing Dairy Farmers of America (DFA), a national dairy cooperative with more than 13,000 members that market milk to plants regulated on the Southeast, Appalachian, and Florida orders testified in support of Proposal 1. The DFA witness provided evidence that explained the additional supplemental milk transportation costs of moving milk into the Southeastern United States as a result of hurricanes Charley, Frances, Ivan and Jeanne. The witness testified that beginning on September 11, 2004, several loads of milk originating in Rockingham, Virginia, were ordered by a plant in North Charleston, South Carolina, to be rerouted to a plant in Spartanburg, South Carolina because of weather related concerns. The witness indicated that DFA would provide actual invoices for the transportation costs, including fuel surcharges, plus any other documentation needed by the Market Administrator to prove conclusively that reroutes took place while transporting milk into the southeast area.

A witness representing Lone Star Milk Producers (LSMP), a dairy cooperative that has members in Kansas, Oklahoma, Texas, Missouri, Arkansas, Louisiana, Mississippi, Tennessee, and Kentucky, testified in support of Proposal 1. The witness noted that during the hurricanes LSMP was involved in dispatching milk to points in the Southeastern United States.

The witness provided evidence indicating additional supplemental milk transportation costs that occurred when delivering milk from Chaves County, New Mexico, to a Publix plant in Lakeland, Florida. The witness noted that LSMP delivered two loads an estimated 1,727 miles per load, at a rate of $2.04 per loaded mile totaling $3523.08 per load or $7046.16 for both loads.

A witness representing Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD&VA), a cooperative with approximately 1,450 members in 11 states marketing milk in the Northeast, Appalachian, and Southeast orders, testified in support of Proposal 1. The MD&VA witness provided evidence indicating that during the hurricane months extraordinary milk movements in the Southeast were incurred. Specifically, the witness related that a load of milk was ordered on September 9, 2004, by the Superbrand plant (Winn Dixie Dairy Plant) in Taylors, South Carolina. The Superbrand plant needed to ship packaged milk to Florida so MD&VA shipped a load of milk from Franklin, Pennsylvania. The load was shipped 518 miles at a hauling cost of $2.25 per mile, totaling $1,166.50. The witness explained, additional orders were placed on September 10, 2004, for bulk milk deliveries to the Superbrand plant in Taylors, South Carolina, and MD&VA shipped five loads to the Superbrand plant (*i.e.,* three from Frederick, Maryland, and two from Franklin, Pennsylvania).

A witness representing National Dairy Holdings (NDH), which has 12 Class I processing plants at various locations in the Appalachian, Southeast, and Florida marketing areas, and operates a total of 20 plants across the United States, testified in support of Proposal 1. The witness emphasized that the scope of the devastation and destruction caused by the four hurricanes in the southeastern part of the United States was the basis for NDH's support of the proposal. As a result, stated the witness, NDH shut plants in response to evacuation notices as the storms headed for landfall. Production was stopped and the refrigeration systems and electrical supply were shut down, noted the witness. The aftermath of the hurricanes caused power outages and the plants to remain closed for days, noted the witness.

It was the opinion of the NDH witness that dairy farmers should not be burdened with the entire cost of hauling milk during the hurricanes. In conclusion, the witness stated that raising the revenues for reimbursing transportation costs under the Federal milk marketing orders would ensure equitable treatment for all handlers of Class I milk regulated under the Appalachian, Southeast, and Florida orders.

A witness from Dean Foods Company (Dean Foods) testified in support of Proposal 1. According to the witness,

Dean Foods owns and operates distributing plants fully regulated on the Appalachian, Southeast, and Florida orders. The Dean Foods witness acknowledged that Proposal 1 calls for a temporary increase in Class I differentials—an action the company would normally oppose. The adoption of Proposal 1 would result in an increased cost of milk for Dean Foods, and it is unlikely that the company would be eligible for reimbursement provided for within the proposal, according to the witness. However, the witness stated that after careful consideration and firsthand knowledge of the resulting chaos from hurricanes Charley, Frances, Ivan and Jeanne, it was the opinion of Dean Foods that the adoption of Proposal 1 is the most reasonable solution for hurricane relief for their suppliers in the affected region. The Dean Foods witness concluded that not only should Proposal 1 be adopted, but that it should be considered on an emergency basis, stating that any delay may result in confusion in the regional milk marketplace.

In a post-hearing brief filed by the proponent cooperatives, the cooperatives reiterated their support for Proposal 1 as modified at the public hearing. The proponent cooperatives also expressed their desire that a specific timeframe should not be established for determining the eligibility of extraordinary transportation costs incurred as a result of the four hurricanes.

No additional post-hearing briefs were filed in support of or in opposition to Proposal 1. Also, the record contains no opposition testimony to the adoption of the proposed amendments.

Based on the record evidence of this proceeding, this final decision finds that Proposal 1, with certain modifications, should be adopted for the Appalachian, Florida, and Southeast milk orders to provide reimbursement to handlers who incurred extraordinary transportation costs for bulk milk movements due to disruptions caused by the aforementioned hurricanes. Record evidence clearly indicates that movements of bulk milk for the Appalachian and Southeast orders, and particularly the Florida order were impacted due to hurricanes Charley, Frances, Ivan, and Jeanne. Some witnesses referred to the proposed amendments as providing relief to handlers who incurred extraordinary transportation costs due to the hurricanes. However, the proposed amendments adopted in this final decision provide only reimbursement for extraordinary transportation costs to qualifying handlers due to the hurricanes.

Record data indicates proponent cooperatives—at the time of the hearing—had identified 664 loads of bulk milk movements for Orders 5, 6, and 7 that were impacted by the hurricanes at an estimated total for extraordinary transportation costs of about $1.6 million. A breakdown of the record data shows the total loads and estimated extraordinary costs for Orders 5, 6, and 7 are 118 loads at $102,206, 323 loads at $1,134,469, and 223 loads at $370,085, respectively. Record evidence indicates that these extraordinary transportation expenses are a result of circumstances caused by the historically unprecedented landing of four hurricanes across Southeastern United States during a 7-week period.

Record testimony details the impact of these hurricanes on the three orders, particularly Order 6, whereby the normal movement of milk from dairy farmers to processors and consumers was disrupted by unprecedented weather and weather-driven circumstances. The record demonstrates disruption of the milk marketing system that clearly rises to the level of market disorder of varying degrees for the Florida, Southeast, and Appalachian orders. In addition, the record evidence demonstrates that these disorderly marketing conditions were weather-driven events that could not be avoided.

According to the record evidence, the days prior to the initial hurricane Charley through the aftermath of hurricane Jeanne is a period that represents bulk milk movement disruptions caused by official declarations of mandatory evacuations for portions of Florida, processing plant closings for an extended numbers of days and subsequent refusal of milk deliveries by such plants, suspended operations by plants for storm related reasons, and shut-downs of roads and bridges that required large scale re-routing of bulk milk supply traffic to Florida from the Southeast, Appalachian, and other milk marketing areas.

The record of the proceeding shows that handlers experienced other mass disruptions of normal milk marketing including the inability to pick up, deliver, and transport bulk producer milk caused by a wide array of storm related disruptions of power supplies and basic transportation infrastructure with Florida having the most disruptive impact. In varying degrees, the impact cascaded across the integrated bulk milk marketing system of the Appalachian, Southeast, and Florida milk orders.

One of the functions of the Federal milk order program is to provide for the orderly exchange of milk between the dairy farmer and the handler (first buyer) to ensure the Class I needs of the market are met. The record evidence clearly reveals that the movements of bulk milk in Orders 5, 7, and particularly 6 were disrupted due to the hurricanes. Accordingly, the proposed amendments should be adopted in Orders 5, 6, and 7 to provide reimbursement to handlers incurring additional transportation expenses for bulk milk movements due to the unprecedented weather conditions that occurred in the marketing areas and the resulting disruption.

The proposed amendments adopted in this final decision would implement in Orders 5, 6, and 7 a temporary increase in the Class I milk price to provide reimbursement to handlers and cooperative associations in their capacity as handlers (hereinafter referred to as handlers) who incurred extraordinary costs in moving bulk milk as a result of the hurricanes impact on the Southeastern United States, particularly the Florida marketing area. The proposed amendments, for a 3-month period beginning January 1, 2005, would implement an increase in the Class I milk price at a rate not to exceed $.04 per hundredweight in the Appalachian and Southeast orders, and at a rate not to exceed $.09 per hundredweight in the Florida order. The funds generated through the temporary Class I milk price increase would be disbursed during February 2005 through April 2005 to qualifying handlers who incurred extraordinary transportation costs as a result of the aforementioned hurricanes. The reimbursement, as proposed by the proponent cooperatives and adopted in this decision, would be disbursed to qualifying handlers on an actual transportation cost basis or at a rate of $2.25 per loaded mile, whichever is less.

As adopted in this final decision, extraordinary transportation costs eligible for reimbursement are specifically those costs associated with the costs incurred in transporting bulk milk as a result of the hurricanes. As indicated in the record for this proceeding, the extraordinary costs are those costs that are above the usual and customary costs associated with moving bulk milk—including supplemental bulk milk—to the Appalachian, Florida, and Southeast marketing areas. The transportation costs will be the hauling rate including any fuel surcharge. Record data indicates that the fuel surcharge may be included in the flat hauling rate or listed as a separate fee

on the billing documents such as bills of lading, manifest tickets, and invoices. Accordingly, premium charges or give-up charges will not be considered as transportation costs under the proposed amendments.

Record evidence supports applying a maximum mileage rate of $2.25 per loaded mile. A loaded mile, as explained by proponents at the hearing, is the one-way hauling distance from the origination point to the destination point. Record data reveals the mileage rate charged by haulers and paid by proponent cooperatives ranged from $2.02 per loaded mile to $2.27 per loaded mile. This decision finds that the mileage rate of $2.25 per loaded mile is reasonable and supported by record evidence. Thus, this rate is adopted.

The proposed amendments adopted in this final decision provide, for the months of January 2005 through March 2005, a temporary increase in the price for Class I milk at a maximum rate of $.09 per hundredweight for the Florida order and at a maximum rate of $.04 per hundredweight for the Appalachian and Southeast orders.

The proposed amendments, adopted in this final decision, provide that the Market Administrators for Order 5, 6, and 7 calculate the Class I price increase rate based on the total estimated extraordinary transportation costs and the estimated Class I producer milk receipts for January 2005 through March 2005, using 2003 and 2004 order data as a benchmark for estimating the Class I milk receipts.

The rate established by the Market Administrators for Orders 5, 6, and 7 shall be listed on the monthly Federal milk order advance Class I price announcement. The first date for submitting claims to the Market Administrators for Order 5, 6, and 7 for reimbursement of extraordinary transportation costs will be December 10, 2004, thereafter, claims may be submitted through February 1, 2005, for consideration of reimbursement. These deadlines will provide Market Administrators sufficient time to review the claims submitted and determine whether such claims are eligible for reimbursement under the proposed amendments. The rate assessed for January 2005 will be listed on the advance Class I price announcement scheduled to be released on December 23, 2004. For Class I rates that will be assessed in February and March 2005, the rates will be calculated by the Market Administrators for Order 5, 6, and 7 and included on the advance Class I price announcements scheduled to be released January 21, 2005, and February 18, 2005, respectively.

This final decision also provides the Market Administrator of the order with the authority to reduce the rate of increase on the Class I milk price based on the estimated transportation cost reimbursement claims received. Any balance remaining at the end of the disbursement period shall be prorated to Class I pool distributing plant handlers who were assessed the Class I milk price increased rate.

Record evidence indicates that movements of bulk milk in the Appalachian, Florida, and Southeast orders were disrupted as a result of hurricanes Charley, Frances, Ivan and Jeanne from August 2004 through early October 2004. Record testimony reveals that the initial hurricane (hurricane Charley) made landfall on August 10, 2004, but that disruptions in bulk milk movements were experienced days prior to the hurricane making landfall. The record evidence and testimony further indicates that disruptions in milk movements continued through early October 2004. Accordingly, this final decision provides that only extraordinary transportation expenses that were after August 4, 2004, and before October 3, 2004, for each of the three orders should be eligible for reimbursement under the proposed amendments. This established time period should help Market Administrators in determining which transportation costs are eligible for reimbursement under the respective orders.

The proposal, as adopted in this final decision, specifies the types of milk movements that will qualify for transportation cost reimbursement as the following: (1) Loads of producer milk delivered or rerouted to a pool distributing plant; (2) loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant; (3) loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant; (4) loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant; and (5) loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants.

As adopted in this final decision, reroutes constitute only those portions of milk movements that were other than usual and customary shipping routes from individual shipping points. The transportation costs associated with the additional movement of the bulk milk to alternative delivery points will be eligible for reimbursement. However, the transportation costs for the initial movement of the bulk milk will not be eligible for reimbursement.

Other types of movements that are covered under the proposed amendments include but are not limited to transportation costs associated with bulk milk moved out of the path of the hurricanes that was later shipped to a distributing plant. Also, those additional costs incurred by handlers shipping bulk milk to plants outside of hurricane affected areas because these plants packaged milk to replace the production of plants that had been closed due to the extreme weather events in the hurricane affected areas will be eligible for reimbursement.

Proponent cooperatives modified their proposal at the hearing to allow loads of bulk milk transferred or diverted to a plant regulated under another Federal milk order or to other nonpool plants to qualify for transportation cost reimbursement. Record data reveals that at the time of the hearing SMI had identified a total of 130 loads of bulk milk movements for the Florida and Southeast orders that were hurricane related. The record testimony indicates that approximately 50 to 55 percent of these SMI bulk milk movements were to nonpool plants.

The record indicates that fluid processing plants in Florida were not operating for several extended periods during hurricanes Charlie, Frances, Ivan, and Jeanne. According to record evidence, the only option for the marketing of this milk was to ship it to a nonpool plant that was a significant distance from the milk's intended fluid market. This quantity of bulk milk movements represents a substantial percentage of the movements for the Florida order and the estimated extraordinary transportation costs incurred under the Florida order.

Record testimony indicates these loads of bulk milk were initially intended to be delivered to pool distributing plants to fulfill the Class I needs of the market. However, due to disruptions caused by the four hurricanes, the pool distributing plants were closed or their operations suspended for extended periods. Record evidence also indicates that the only alternative to the rerouting of bulk milk was to dump the milk because alternative markets were unavailable.

Since the record establishes that the milk would have been used to supply the Class I market if pool distributing plants would have been able to accept deliveries, such milk movements should be eligible for transportation cost reimbursement under the orders. On the basis of the record evidence, this final decision finds that—in order for

handlers to qualify for reimbursement of extraordinary transportation costs incurred moving bulk milk to nonpool plants-such handlers will be required to provide proof to the satisfaction of the order Market Administrator that such bulk milk movements were hurricane related and that the intended delivery of such milk was to pool distributing plants for Class I use. Handlers should apply under the Order in which the milk was pooled.

Proponent cooperatives modified Proposal 1 at the hearing to prevent the dual reimbursement of transportation costs associated with bulk milk movements under Orders 5 and 7, which currently provide transportation credits for supplemental Class I milk. Specifically, for milk movements that would qualify for reimbursement under Orders 5 or 7 transportation credit provisions and the temporary transportation cost reimbursement proposed amendments, the proponent cooperatives' propose that the amount of reimbursement received under Order 5 or Order 7 transportation credits provisions be reduced by the amount of eligible cost reimbursement that would be due under the temporary reimbursement proposed amendments. This final decision adopts this proposed amendment with modification.

Under the proposed amendments adopted in this decision, handlers who have received transportation credits for movements of bulk milk under Section 82 of Orders 5 and 7 will be eligible to receive reimbursement for the same loads of milk under the transportation cost reimbursement proposed amendments provided such milk movements resulted from the hurricanes. The reimbursement amount will be the difference between the amount of transportation credits received by the handlers under Order 5 or Order 7 and the amount due to such handlers under the transportation cost reimbursement proposed amendments.

The proposed amendments, as adopted in the decision, provide the Market Administrators of Orders 5, 6, and 7 the sole authority to evaluate the evidence to determine which transportation cost claims are eligible for reimbursement. The Market Administrator will review all documents submitted by handlers in a timely manner in determining which claims are eligible for transportation cost reimbursement under the proposed amendments. Under each of the three orders, handlers applying for reimbursement of extraordinary transportation costs must submit proof to the satisfaction of the Market Administrator that such transportation costs are eligible for reimbursement. Handlers may submit documents supporting their claims with their monthly handler report of milk receipts and utilization. These documents may include but are not limited to invoices, receiving records, bulk milk manifests, hauling billings, transaction records, and contract agreements. Handlers who have applied for or received transportation cost reimbursement through insurance claims or through any State, Federal, or other programs must submit documentation of such claims of reimbursement to the Market Administrators for Orders 5, 6, and 7.

Proponent cooperatives assert that their proposed amendments for transportation cost reimbursement, if adopted, would be of marketwide benefit for market participants (producers and handlers) of Orders 5, 6, and 7. Although the proposed amendments adopted in this final decision address the disorderly movements of bulk milk resulting from the hurricanes, only those handlers who incurred extraordinary transportation costs for certain milk movements will be eligible for reimbursement under Orders 5, 6, and 7. Only extraordinary transportation costs for moving bulk milk due to the hurricanes will be eligible for reimbursement under Orders 5, 6, and 7 and the payments for such costs will be limited to only qualifying handlers (handlers and cooperative associations in their capacity as handlers).

2. *Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.* Record evidence supports the adoption of Proposal 1, with modifications, on an emergency temporary basis due to the unprecedented occurrences of hurricanes Charley, Frances, Ivan, and Jeanne within a 7-week period and the resulting disruption on milk movements for Orders 5, 6, and 7. The proposed amendments to Orders 5, 6, and 7 would provide reimbursement to handlers who incurred extraordinary transportation costs for bulk milk movements due to the four hurricanes by temporarily increasing the price for Class I milk and disbursing the funds generated by the Class I milk price increase during February 2005 through April 2005.

Record evidence clearly indicates that movements of bulk milk for the Appalachian and Southeast orders, and particularly the Florida order were impacted due to hurricanes Charley, Frances, Ivan, and Jeanne. Record evidence clearly indicates there were a number of transportation and marketing disruptions that impacted Orders 5, 6, and 7 due to the hurricanes including official declarations of mandatory evacuations for portions of Florida, processing plant closures and suspended operations, and shut-downs of roads and bridges that required rerouting of bulk milk. Also, record evidence shows that Order 5, 6, and 7 handlers experienced other mass disruptions including the inability to pick up, deliver, and transport bulk producer milk. Accordingly, the timely implementation of the proposed amendments will provide much needed reimbursement to handlers who experienced extraordinary costs in hauling bulk milk for Orders 5, 6, and 7 as a result of the four hurricanes.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Florida, and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Marketing Agreement and Order Amending the Orders

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

August 2004 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1005, 1006, and 1007

Milk marketing orders.

Dated: November 15, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Orders Regulating the Handling of Milk in the Appalachian, Florida, and Southeast Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian, Florida, and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PARTS 1005, 1006, AND 1007—[AMENDED]

1. The authority citation for 7 CFR Parts 1005, 1006, and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE APPALACHIAN MILK MARKETING AREA

2. Section 1005.60 is amended by revising paragraph (a) and adding a new paragraph (g) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (5) and paragraph (g)(7) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of transportation costs, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant that was then transferred to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The cost of transportation on loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants which

were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(6) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.04 per hundredweight.

(7) If the cost of transportation computed pursuant to paragraphs (g)(1) through (5) of this section exceeds the amount computed pursuant to paragraph (g)(6) of this section, the market administrator shall prorate such payments to each handler based on the handler's proportion of transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section. Transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section until paid, or until the time period for such payments is concluded.

(8) The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section, or the miles of transportation on loads of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section multiplied by $2.25 per loaded mile, whichever is less.

(9) For each handler, the reimbursement of transportation costs pursuant to paragraph (g) of this section for bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section shall be reduced by the amount of payments received for such milk movements from the transportation credit balancing fund pursuant to § 1005.82.

* * * * *

PART 1006—MILK IN THE FLORIDA MILK MARKETING AREA

3. Section 1006.60 is amended by revising paragraph (a) and adding a new paragraph (g) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.09 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0009 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (5) and paragraph (g)(7) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of transportation costs subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant that was then transferred to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The cost of transportation on loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(6) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.09 per hundredweight.

(7) If the cost of transportation computed pursuant to paragraphs (g)(1) through (5) of this section exceeds the amount computed pursuant to paragraph (g)(6) of this section, the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section. Transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section until paid, or until the time period for such payments has concluded.

(8) The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section, or the miles of transportation on loads of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section multiplied by $2.25 per loaded mile, whichever is less.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MILK MARKETING AREA

4. Section 1007.6 is amended by revising paragraph (a) and adding a new paragraph (g) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus $0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus $0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (5) and paragraph (g)(7) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be

announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of transportation costs, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant that was then transferred to a pool distributing plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from another order plant which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The cost of transportation on loads of bulk milk transferred or diverted to a plant regulated under another Federal order or to other nonpool plants which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(6) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times $0.04 per hundredweight.

(7) If the cost of transportation computed pursuant to paragraphs (g)(1) through (5) of this section exceeds the amount computed pursuant to paragraph (g)(6) of this section, the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section. Transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to paragraphs (g)(1) through (5) of this section until paid, or until the time period for such payments has concluded.

(8) The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section, or the miles of transportation on loads of bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section multiplied by $2.25 per loaded mile, whichever is less.

(9) For each handler, the reimbursement of transportation costs pursuant to paragraph (g) of this section for bulk milk delivered or rerouted as described in paragraphs (g)(1) through (5) of this section shall be reduced by the amount of payments received for such milk movements from the transportation credit balancing fund pursuant to § 1007.82.

* * * * *

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR Part _____[2]) which is annexed hereto; and

II. The following provisions: § _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____
(Title) _____
(Address) _____

(Seal)
Attest

[1] First and last sections of order.
[2] Appropriate Part number.
[3] Next consecutive section number.
[4] Appropriate representative period for the order.

[FR Doc. 04–25684 Filed 11–16–04; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/STD–00–550]

RIN 1904–AB08

Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking; notice of availability of a supplemental technical support document appendix, and correction.

SUMMARY: In conjunction with an earlier advance notice of proposed rulemaking (ANOPR) to establish energy conservation standards for distribution transformers, DOE announces the availability of a supplemental technical support document (TSD) appendix. DOE has also identified a mislabeling found in the ANOPR.

SUPPLEMENTARY INFORMATION: As indicated at the public meeting on September 28, 2004, the Department of Energy (DOE) announces the availability of a supplemental TSD appendix entitled, ''Appendix 8E: Average Transformer Design Properties from Life-Cycle Cost Model.'' This appendix provides information for the public to consider in connection with the July 29, 2004, ANOPR (69 FR 45375).

DOE has also identified a mislabeling found in the ANOPR on pages 45401 through 45404 and in Chapter 8 of the TSD on pages 8–38 through 8–43. On these pages, the text mistakenly labels some reported values as an ''average manufacturer's selling price'' when they should be referred to as the ''consumer equipment cost before installation.'' This mislabeling does not impact the inputs, results, or any other aspect of the ANOPR.

Stakeholders can locate and download the TSD Chapter 8 as well as the newly posted supplemental Appendix 8E on the Distribution Transformers ANOPR TSD page: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/dist_trans_tsd_061404.html.*

FOR FURTHER INFORMATION CONTACT: Sam Johnson, Project Manager, Energy Conservation Standards for Distribution Transformers; Docket No. EE–RM/STD–00–550; U.S. Department of Energy, Office of Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–0854. E-mail: *Sam.Johnson@ee.doe.gov.*

Thomas B. DePriest, Esq.; U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9507. E-mail: *Thomas.DePriest@hq.doe.gov.*

Issued in Washington, DC on November 8, 2004.

David K. Garman,

Assistant Secretary, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 04–25609 Filed 11–18–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–152549–03]

RIN 1545–BC69

Section 179 Elections; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of public hearing relating to the election to expense the cost of property subject to section 179.

DATES: The public hearing originally scheduled for November 30, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, August 4, 2004 (69 FR 47043), announced that a public hearing was scheduled for November 30, 2004, at 10 a.m., in the auditorium. The subject of the public hearing is proposed regulations under section 179 of the Internal Revenue Code. The public comment period for these regulations expired on November 2, 2004. Outlines of oral testimony was due on November 9, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, November 15, 2004, no one has requested to speak. Therefore, the public hearing scheduled for November 30, 2004, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 04–25650 Filed 11–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219–AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is withdrawing the remaining phases of its 1989 ''Air Quality, Chemical Substances, and Respiratory Protection'' proposed rule, and is providing further explanation of its September 26, 2002, **Federal Register** document regarding withdrawal of the proposed rule. MSHA's 2002 decision to withdraw the remaining phases of the proposed rule was based on adverse case law, a change in Agency priorities, and the staleness of the rulemaking record. Although the September 26, 2002, document was intended to withdraw the rule as of that date, the U.S. Court of Appeals for the District of Columbia Circuit found that the document provided inadequate explanation of the Agency's decision to terminate the rulemaking. The court ordered MSHA to either proceed with the Air Quality rulemaking or give a reasoned account of its decision not to do so. This document provides a reasoned account of MSHA's decision to terminate the rulemaking and to withdraw the remaining phases of the Air Quality rule.

DATES: The proposed rule published on August 29, 1989 (54 FR 35760) is withdrawn as of November 19, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209–3939, *Nichols.Marvin@dol.gov,* (202) 693–9440 (telephone), or (202) 693–9441 (facsimile). This document is available in alternative formats, such as large print and electronic format, and can be accessed on MSHA's Internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' link.

SUPPLEMENTARY INFORMATION:

A. Rulemaking Background

On August 29, 1989, MSHA proposed a rule, 54 FR 35760, that would have, among other things, established permissible exposure limits (PELs) for substances that the Agency believed might adversely affect the health of miners; required control of exposure to such substances; prescribed methods and frequency of monitoring to evaluate exposure; and revised requirements for respiratory protection programs for metal and nonmetal mines and established similar requirements for coal mines. 54 FR 35760, 35761 (August 29, 1989). Additionally, the proposed rule included provisions addressing carcinogens, asbestos construction work, dangerous atmospheres, medical surveillance, prohibited areas for food and beverages, and abrasive blasting and drill dust control. Of the more than 600 chemical substances for which MSHA sought to establish PELs, 165 of those substances would have been regulated for the first time. Because of the scope and complexity of the Air Quality rule, MSHA divided the rulemaking provisions into three groups or ''phases.'' The Agency set separate comment periods for each of the three groups and announced that it would hold three sets of public hearings, with each set addressing one group of the proposed rule's provisions.

The first group of provisions included abrasive blasting and drill dust control; dangerous atmospheres; exposure monitoring; prohibited areas for food and beverages; and PELs for nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide. Two public hearings were held for this group of provisions, the first on June 4, 1990, in Denver, Colorado, and the second on June 7, 1990, in Coraopolis, Pennsylvania. The comment period for this group of provisions closed on March 2, 1990.

The second group of provisions included carcinogens; asbestos construction work; means of controlling exposure to hazardous substances; respiratory protection; and medical surveillance. Two public hearings were held on this group of provisions, the first on October 12, 1990, in Washington, DC and the second on October 19, 1990, in San Francisco, California. The comment period for the second group of provisions closed on June 29, 1990.

The third and final group of provisions included all permissible exposure limits other than nitrogen dioxide, nitric oxide, carbon monoxide, and sulfur dioxide. Two public hearings were held on these PELs, the first on March 19, 1991, in Denver, Colorado, and the second on March 26–27, 1991, in Washington, DC. The comment period for this group of provisions closed on December 14, 1990. Following the public hearings, the rulemaking record remained open until August 30, 1991, to permit interested persons to submit additional statements, data, and information on any provision of the proposed rule.

In 1994, MSHA adopted one provision of the proposed rule as a final rule. ''Air Quality: Health Standards for Abrasive Blasting and Drill Dust Control,'' 59 FR 8318 (February 18, 1994). For the reasons set forth in this document, the amount of additional work performed on the remainder of the proposed rule between 1994 and 2002 was somewhat limited.

In September 2002, MSHA decided to withdraw the remainder of its Air Quality proposed rule from the Regulatory Agenda. 67 FR 60611 (September 26, 2002). By way of explanation, the Agency said that its decision to withdraw the proposed rule ''was the result of changes in Agency priorities and the possible adverse effect * * * of the decision in *AFL–CIO et al.* v. *OSHA,*'' 965 F.2d 962 (11th Cir. 1992), in which the U.S. Court of Appeals for the Eleventh Circuit invalidated an OSHA rule that set new PELs for 428 toxic substances. MSHA also noted that it had been ''more than 13 years since the proposal was published and more than 12 years since the comments were received.'' 67 FR at 60611.

The United Mine Workers of America (UMWA) petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Agency's decision to withdraw its proposed Air Quality rule. The Court concluded that the Agency's action was arbitrary and capricious because it failed to provide an adequate explanation for its decision. *Int'l Union, UMWA* v. *MSHA,* 358 F.3d 40 (D.C. Cir. 2004). The Court remanded the matter to MSHA and ordered that the Agency ''either proceed with the Air Quality rulemaking or give a reasoned account of its decision not to do so.'' *Id.* at 45. This notice provides further explanation of the Agency's 2002 decision to withdraw the proposed rule. The notice also withdraws the remaining phases of the Air Quality proposed rule and provides MSHA's continuing rationale for doing so.

This notice discusses the reasons for withdrawal of the proposed rule in relation to two distinct periods of time. Section B of this notice, ''Reasons for the 2002 Decision to Withdraw the Proposed Rule,'' discusses the reasons underlying MSHA's September 2002 decision to withdraw the Air Quality proposed rule. Section C of this notice, ''Continuing Reasons for the Withdrawal of the Proposed Rule,'' discusses the reasons that continue to support MSHA's decision to withdraw the proposed rule. The reasons set forth in Section C relate to the period of time following publication of the September 2002 notice.

B. Reasons for the 2002 Decision To Withdraw the Proposed Rule

MSHA's decision to withdraw the remaining phases of its Air Quality rulemaking in September 2002 was premised on three reasons:

- The adverse effect of *AFL–CIO et al.* v. *OSHA,* 965 F.2d 962 (11th Cir. 1992),
- Changes in the Agency's priorities, and
- The staleness of the rulemaking record.

Though the foregoing reasons represent the specific grounds upon which the decision was made, the limits of the Agency's resources were an inherent element of those reasons and necessarily contributed to MSHA's decision.

1. MSHA's Statutory Responsibility

The Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.*, sets forth MSHA's statutory responsibility when promulgating mandatory standards dealing with toxic materials or harmful physical agents. Section 101(a)(6)(A) of the Mine Act, 30 U.S.C. 811(a)(6)(A), states that the Secretary of Labor:

> shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of mandatory standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Accordingly, the Mine Act imposes a threshold that the Agency must satisfy in promulgating mandatory health standards. Specifically, MSHA must ensure that it establishes standards based on the best available evidence, including a consideration of the latest available scientific data; it must ensure that a significant risk of ''material impairment'' of health or functional capacity will ensue if it fails to act (*i.e.*, the existing exposure limit poses a significant risk of material impairment or functional capacity); and it must ensure that the standard is both economically and technologically feasible. 30 U.S.C. 811(a)(6)(A).

2. Effect of the Eleventh Circuit's Decision Vacating OSHA's Air Contaminants Standard

In *AFL–CIO,* the U.S. Court of Appeals for the Eleventh Circuit vacated the Occupational Safety and Health Administration's (OSHA's) final omnibus Air Contaminants standard, 54 FR 2332 (January 19, 1989), in which OSHA sought to establish PELs for 428 toxic substances. Although *AFL–CIO* was decided under the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq.*, a statute with rulemaking provisions that differ in some ways from those of the Mine Act, the major holding of the Eleventh Circuit's decision appears on its face to apply to both OSHA and MSHA: that the Agency must make specific findings for each substance and each proposed PEL. The similarities between the Air Quality and Air Contaminants standards, and the Agencies' statutory provisions, each weighed heavily in favor of MSHA assuming a regulatory approach that was consistent with the holding of AFL–CIO.

Like OSHA's Air Contaminants standard, MSHA's Air Quality proposed rule was intended to be a ''generic rulemaking'' in which the Agency would set exposure limits for hundreds of substances in a single rulemaking. Unlike the OSHA Air Contaminants standard, however, MSHA's Air Quality rule included proposed standards on eight substantive components in addition to the hundreds of proposed

PELs. The eight additional components that the Air Quality proposed rule addressed were: (1) Revision of existing standards on means of control of harmful airborne substances in mines; (2) control of dust generated by abrasive blasting and drilling; (3) exposure monitoring by mine operators; (4) hazards posed by dangerous atmospheres, including areas underground, silos, vats, tanks, and other confined spaces; (5) carcinogens; (6) asbestos construction work at mines; (7) medical surveillance of miners exposed to carcinogens; and (8) a respiratory protection program.

Although OSHA also has standards addressing many of the above components, it did not attempt to promulgate those standards as part of its Air Contaminants rule. 29 CFR 1910.94 (abrasive blasting); 29 CFR 1910.134 (respiratory protection); 29 CFR 1910.146 (confined space); 29 CFR 1926.1101 (asbestos construction work); and 29 CFR part 1990 (carcinogens policy). OSHA specifically noted in the preamble to its final Air Contaminants rule that:

The final regulation is limited to consideration of revising the PELs. There is no consideration of the ancillary requirements which are typically developed as part of individual substance rulemaking but were not included in the original § 1910.1000 standard. OSHA has published ANPRs for Exposure Monitoring (53 FR 32591–32595), and Medical Surveillance (53 FR 32595–32598), and is developing a proposal covering revision to the respirator provisions of the OSHA Standards. OSHA has issued a final rule expanding the Hazard Communication Standard.

While medical surveillance, exposure monitoring and other industrial hygiene practices are important, OSHA is not in a position to develop these requirements while at the same time developing PELs for several hundred substances. OSHA has determined that lowering exposures through the development of reduced PELs is of higher priority because it is more effective in reducing occupational diseases and material impairment of health. These ancillary requirements will be addressed as priorities dictate. 54 FR at 2335. MSHA has similarly recognized a hierarchy of controls in promulgating its rules such that miners' exposure to harmful airborne contaminants is controlled principally by removal or dilution of the contaminant, with such ancillary protections as personal protective equipment, industrial hygiene practices and medical transfer used to augment the principal means of protection—removal of the contaminant.

MSHA's Air Quality proposed rule included some 200 (approximately 50%) more PELs than did OSHA's Air Contaminants standard, as well as the eight substantive components listed above, which OSHA's standard did not include. Accordingly, the scope and complexity of the Air Quality proposal was significantly more comprehensive and ambitious than was OSHA's already groundbreaking approach to addressing potential chemical hazards that may be found or introduced in the workplace.

As discussed in more detail in this section, the *AFL–CIO* holdings effectively gave MSHA two choices: either ignore the decision and accept the likely risk that a final rule would be vacated, or try to comply with *AFL–CIO* and tie up all of the Agency's resources for years to come. Neither of these options was suitable to MSHA, so the Agency decided to withdraw the proposed rule, a reasonable course of action in light of the case.[1]

The *AFL–CIO* court held that ''the PEL for each substance must be able to stand independently, *i.e.*, that each PEL must be supported by substantial evidence in the record considered as a whole and accompanied by adequate explanation.'' 965 F.2d at 972. The court continued by stating that ''OSHA may not, by using such multi-substance rulemaking, ignore the requirements of the OSH Act.'' *Ibid.* Though generic rulemaking is permissible, the court noted that generic rulemakings are required to demonstrate the existence of something ''common to or characteristic of a whole group or class.'' *Id.* at 971 (quoting Webster's Third New International Dictionary 945 (1966)). The court was not persuaded that OSHA's Air Contaminants standard represented generic rulemaking because the rule did not address substances with common characteristics or impose common requirements on classes of substances. Instead, the court deemed the standard to be nothing more than ''an amalgamation of 428 unrelated substance exposure limits.'' *Id.* at 972.

MSHA's Air Quality proposed rule was comparable to OSHA's Air Contaminants rule in that it did not demonstrate the existence of common characteristics between, or impose common requirements on, the hundreds of substances listed in the PEL table. Under the *AFL–CIO* holding, MSHA's Air Quality rule could be categorized by a reviewing court as nothing more than an amalgamation of 600+ unrelated substance exposure limits.

AFL–CIO also held that the OSH Act does not permit OSHA to regulate any risk that it chooses. *Id.* at 973. Rather, the Agency may only regulate those risks that present a ''significant'' risk of material health impairment. *Ibid.* Thus, the court held that for each substance OSHA seeks to regulate, the Agency must present individual findings that ''a significant risk of material health impairment exists at the current levels of exposure to the toxic substance in question,'' *id.,* and that the proposed PEL would ''prevent material impairment of health.'' *Ibid.* Finally, the Eleventh Circuit held that ''OSHA has a responsibility to quantify or explain, at least to some reasonable degree, the risk posed by *each* toxic substance regulated.'' *Id.* at 975 (emphasis in original). Although the preamble to OSHA's Air Contaminants rule individually discussed each of the 428 toxic substances for which PELs were established, the court ultimately found that those discussions, and mere conclusory statements regarding risk reduction, fell short of the statutorily required risk assessment that the Agency was required to perform. *Id.* at 975–976.

The holding of *AFL–CIO* presented MSHA with challenges it had not contemplated at the time the Agency proposed the Air Quality rule. Of the more than 600 substances for which MSHA sought to establish PELs, it individually discussed only about two dozen. *See* 54 FR 35760, 35767–35770 (August 29, 1989). Of the two dozen or so substances that were discussed individually, the Agency did not present evidence that it believed the substances might pose a significant risk of material impairment of health or functional capacity, findings it would be required to make in order to finalize the rule. At the time the Air Quality rule was proposed, MSHA had not determined that each of the substances in the proposed rule was found on mine property, much less that those substances were found at levels sufficient to cause significant risk to miners. In this regard, the Air Quality preamble stated that ''[s]ome commenters objected and favored listing only substances found on mining property and which present a risk of a

[1] MSHA notes that even absent the holdings of *AFL–CIO,* promulgation of a final Air Quality rule would have been extremely costly in terms of available resources. At the time that the Agency proposed the rule and for some time thereafter, MSHA believed those costs to be manageable. In retrospect, MSHA realizes that it did not fully appreciate the resources needed to promulgate a rule as comprehensive and complex as the Air Quality rule. The demanding requirements imposed by the holdings of *AFL–CIO,* however, exponentially increased the demand on its resources.

material impairment of health or functional capacity. This proposed rule includes those substances which the Agency has reason to believe, based upon the Agency's knowledge thus far, *could* pose this type of health risk *if found on mine property*.'' *Id.* at 35765 (emphases added). The preamble further stated that although ''the majority of substances in the 'TLV® Booklet' [2] *do not naturally occur in mining,* they *may* be *brought on mine property* in the course of day-to-day operations. For this reason, MSHA is proposing to include most of the TLV® list in a table of permissible exposure limits.'' *Id.* at 35766 (emphasis added.)

In fact, MSHA summarized commenters' general dissatisfaction with the sufficiency of the evidence the Agency provided in proposing the rule by stating:

Commenters generally criticized the Agency for limiting its discussion of specific substances on the PEL table to less than two dozen of the several hundred substances listed. They requested that MSHA give a rationale for each substance in the proposed rule, evidence that all are present in the mining environment, and how these chemicals are used. For those substances for which the Agency proposed to lower the PEL, commenters generally wanted MSHA to: Prove that the present PEL presents a significant risk to miners; quantify the extent of the risk; prove that risk represents a ''material impairment of health;'' and prove that any change in the standard is economically and technologically capable of being achieved.

These commenters also requested that MSHA discuss epidemiological data establishing that these substances are present in concentrations that cause a material impairment of health or functional capacity to miners. They also requested MSHA to provide evidence on the feasibility of controlling these substances with either engineering or administrative controls. 56 FR 8168, 8169 (February 27, 1991).

Like OSHA, MSHA is not statutorily authorized to regulate *any* risk it chooses; rather, section 101(a)(6)(A) of the Mine Act, 30 U.S.C. 811(a)(6)(A), authorizes the Agency to regulate those risks which present a risk of material impairment of health or functional capacity. Because MSHA could not have reasonably promulgated a final rule which made a determination that each substance the Agency sought to regulate presented a significant risk of material impairment of health or functional capacity at the existing PEL, the PELs would not have been able to ''stand independently,'' as was required by *AFL–CIO.* In other words, if MSHA had engaged in separate rulemakings for each of the 600+ substances, it would have been obligated to, among other things, estimate or quantify the risk posed by exposure to the substance at the existing PEL and explain why such exposure presented a significant risk of material impairment to health or functional capacity. Under the logic of *AFL–CIO,* MSHA is required to make the same findings and explanations in its omnibus rulemakings. A persuasive argument could be made that like OSHA, MSHA ''is not entitled to take short-cuts with statutory requirements simply because it chose to combine multiple substances in a single rulemaking.'' 965 F.2d at 975.

Under *AFL–CIO,* MSHA could not have finalized the Air Quality rule in the form in which it was proposed without an unanticipated and enormous expenditure of Agency resources. Providing a quantitative risk assessment for each of the more than 600 substances would have been a lengthy, complex, and costly process requiring MSHA to conduct a significant amount of additional scientific work. In fact, MSHA's completion of rulemaking on even one substance would have required a significant commitment of Agency resources. The Agency's failure to promulgate the Air Quality rule in accordance with *AFL–CIO,* however, would have left MSHA vulnerable to a potentially formidable legal challenge to the rule.

The UMWA suggested in *Int'l Union, UMWA* that the availability of information recommending exposure limits—namely Threshold Limit Values (TLVs®—adopted by the American Conference of Governmental Industrial Hygienists (ACGIH® might enable MSHA to complete the Air Quality rulemaking despite the *AFL–CIO* decision. In fact, the availability of information related to ACGIH's TLVs would not necessarily have made the task of promulgating the Air Quality standard much less complex or arduous. While current TLVs would provide MSHA with a basis for assessing potential PELs, the Agency would still have been required to make an independent evaluation of whether each TLV would be an appropriate PEL. MSHA could not have adopted the ACGIH's TLVs wholesale without an independent assessment of the evidence supporting a PEL consistent with each TLV. This is particularly true because TLVs are established based exclusively on health considerations. ACGIH's establishment of any given TLV does not account for such considerations as economic or technological feasibility, both of which MSHA is statutorily required to consider in establishing its exposure standards. Therefore, an independent assessment of each of the 600-odd substances would have to be made regardless of the TLV recommendations made by AGGIH. The *AFL–CIO* court specifically addressed this issue and found that although OSHA could rely on the ACGIH's recommendations, the Agency was not relieved of its responsibility to make ''detailed findings, with adequate explanations, for all statutory criteria.'' 965 F.2d at 984. Ultimately, MSHA bears the burden of proving that it has met its statutory obligation, and as such, it must be prepared to set forth the analysis used in its determination that a given PEL is based on the best available and latest scientific evidence, *id.,* and that the chosen PEL is economically and technologically feasible.

In 2002, when MSHA made the decision to withdraw the Air Quality proposed rule, it recognized that the unfavorable holding of *AFL–CIO* did not compel the Agency to withdraw the rule. Nonetheless, *AFL–CIO* left MSHA with two equally unappealing alternatives: ignore the decision and risk that a final rule would be vacated, or comply with the holdings of the decision and encumber the Agency's resources for the foreseeable future. MSHA recognized that had it ignored the *AFL–CIO* court decision, a circuit other than the Eleventh Circuit may have been disinclined to follow the holding in that case. Nevertheless, MSHA also knew that it could have been, and likely would have been, challenged in the U.S. Court of Appeals for the Eleventh Circuit, and that litigation in that circuit would very likely have proven fatal to the Air Quality rule unless MSHA made substance-specific assessments for each of the 600+ PELs. There are numerous mine operators in the Eleventh Circuit and MSHA has had to defend its actions in that circuit on previous occasions. *See Nat'l Mining Ass'n, Alabama Coal Ass'n* v. *U.S. Department of Labor,* 153 F.3d 1264 (11th Cir. 1998). Even if

[2] TLV® is the acronym for Threshold Limit Value. Threshold Limit Values are exposure guidelines recommended by the American Conference of Governmental Industrial Hygienists (ACGIH®). The ACGIH's Web site, *http://www.acgih.org/TLV,* describes Threshold Limit Values as being ''designed for use by industrial hygienists in making decisions regarding safe levels of exposure to various chemical substances and physical agents found in the workplace.'' MSHA's existing air quality standards incorporate by reference the ACGIH's 1972 (coal) and 1973 (metal and nonmetal) Threshold Limit Values.

MSHA was not challenged in the Eleventh Circuit, the Agency could have been challenged in a circuit that would have been persuaded by the reasoning in *AFL–CIO.* Thus, while *AFL–CIO* did not compel the Agency to terminate the Air Quality rulemaking, it compelled MSHA to take into account the *AFL–CIO* holding and to make a decision about the fate of the rulemaking accordingly. MSHA's decision to withdraw the Air Quality proposed rule simply acknowledged that after the Eleventh Circuit's decision, it would be difficult and expensive to finalize and defend broad omnibus health rulemakings covering multiple substances. The Agency's decision also reflected its belief that the inordinate resources that would have been required to craft a judicially sustainable final rule would not have been a prudent use of Agency resources.

In *Int'l Union, UMWA,* the UMWA mentioned that another federal agency had successfully promulgated a rule updating a list of toxic chemicals in a single rulemaking, implying that MSHA should be encouraged despite the holdings of *AFL–CIO.* In *Troy Corporation* v. *Browner,* 120 F.3d 277 (D.C. Cir. 1997), the U.S. Court of Appeals for the District of Columbia Circuit upheld an Environmental Protection Agency (EPA) rule adding 286 chemicals to its Toxic Release Inventory (TRI) pursuant to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.* MSHA believes that *Troy* is distinguishable on at least two significant bases, thus making it less pertinent to MSHA's Air Quality rulemaking than *AFL–CIO.* First, and most importantly, the rulemaking provisions of the Mine Act more closely resemble those of the OSH Act than those of the EPCRA. The statutory threshold that EPA must satisfy in order to include a chemical on the TRI list is much lower than MSHA's and OSHA's statutory threshold for establishing PELs for toxic materials and harmful physical agents. The *Troy* court held that EPCRA does not obligate the EPA to demonstrate any ''likelihood of contact between humans and the chemical.'' 120 F.3d at 285–286. Conversely, MSHA's and OSHA's rulemaking provisions require the agencies to demonstrate, among other things, that the agent or contaminant at issue poses a significant risk of ''material impairment of health or functional capacity,'' an exceedingly more demanding threshold than that of the EPCRA.

Second, the substance of the Air Quality rule more closely resembles OSHA's Air Contaminants rule than it does the EPA rulemaking adding chemicals to the TRI list. The requirements imposed on owners of facilities covered by section 11023 of EPCRA are more akin to the requirements imposed on mine operators and employers by MSHA's and OSHA's Hazard Communication standards than the proposed Air Quality standards. In that regard, the relevant EPCRA section requires dissemination of information only, not compliance with substantive exposure limits. The Air Quality proposed rule, unlike the TRI list and MSHA's Hazard Communication rule, included provisions requiring use of engineering and administrative controls to limit exposure to the substance, exposure monitoring, medical surveillance and transfer, and the use of personal protective equipment. Promulgation of comprehensive health rules, such as the Air Quality rule, requires a degree of scientific evidence and feasibility analysis that is not generally associated with notification or informational standards. For this reason, the TRI list addressed in *Troy* and MSHA's Air Quality rule are not substantively similar enough to make *Troy* the most appropriate case for comparison. Given the foregoing, MSHA believes that the grounds for comparing its Air Quality rulemaking to the EPA rulemaking at issue in *Troy* are unsound. MSHA's rulemaking provisions and the content of its Air Quality proposed rule more closely resemble those of the OSH Act and the Air Contaminants rulemaking, thereby making *AFL–CIO* a more germane case than *Troy.*

3. Changes in Agency Priorities

Given the additional burden of following the Eleventh Circuit's requirements to finalize the Air Quality rule, MSHA believed that promulgating the rule would detrimentally affect its other ongoing rulemakings. Consequently, the Agency reassessed its rulemaking priorities, and ultimately decided to withdraw the Air Quality proposed rule. The Mine Act provides the Secretary of Labor broad discretion to set and change rulemaking priorities as she deems appropriate. Specifically, section 101(a) of the Mine Act provides the Secretary the discretion to ''develop, promulgate, and revise as may be appropriate improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.'' 30 U.S.C. 811(a). Likewise, the Mine Act provides the Secretary with the authority to ''promulgate, modify, or revoke'' a proposed rule. 30 U.S.C. 811(a)(4)(A). ''In the event the Secretary determines that a proposed mandatory health or safety standard should not be promulgated,'' she must ''publish h[er] reasons for h[er] determination.'' 30 U.S.C. 811(a)(4)(C). *Int'l Union, UMWA,* 358 F.3d at 43.

MSHA sets and changes its rulemaking priorities based, in part, on the resources available to it. Based on the reasoning of the 1992 *AFL–CIO* decision, the Agency ultimately concluded that promulgation of even a significant portion of the Air Quality standard would have consumed all of the Agency's rulemaking resources. Prior to the demanding requirements imposed by the *AFL–CIO* decision, MSHA believed that the resources necessary to promulgate the Air Quality rule were manageable. However, the resources required to complete the standard in a manner that would withstand judicial scrutiny following *AFL–CIO* were unanticipated at the time that the rule was proposed.

Even a phased approach to promulgating the more than 600 PELs, and the seven substantive components of the rule that remained following promulgation of the abrasive blasting and drill dust control rule, would have exhausted MSHA's rulemaking resources. This would have required MSHA to ignore or neglect many of its other regulatory responsibilities for the foreseeable future. In retrospect, MSHA realized that even a phased approach to promulgating the Air Quality rule would have overwhelmed the Agency, particularly in light of its other rulemaking objectives. MSHA initially grouped the rulemaking provisions simply to facilitate more orderly and organized public comment, and to more easily focus the discussions at the public hearings. The fact that MSHA divided the rulemaking provisions into three distinct groups should not have suggested that the Agency could more easily promulgate judicially sustainable components of the rule than it could promulgate a judicially sustainable rule at once in its entirety. Whether MSHA promulgated the rule as divided, or in its entirety, *AFL–CIO* demanded that MSHA make the same scientifically difficult and exacting findings.

For several years following *AFL–CIO* and the 1994 promulgation of the abrasive blasting and drill dust control rule, MSHA continued to work on various provisions of the Air Quality rule. MSHA anticipated publishing new proposed rules for several of the provisions contained in the Air Quality rule, such as those addressing carcinogens and respiratory protection. The Agency performed work

accordingly. Ultimately, however, because of the changes in MSHA's priorities, the Agency was not able to develop drafts for either component. By 2002, the Agency realized the enormity and breadth of the rule, and the resources that it would have had to devote to finalize any one provision. For example, the abrasive blasting and drill dust control provision of the rule was only one of eight contained in the first group of provisions, and it took nearly five years to complete. As compared to the other provisions, promulgation of the abrasive blasting and drill dust control standard was less complicated than many of the other provisions would have been. Because the Agency determined that even a phased approach to promulgating the remainder of the Air Quality rule was infeasible, it decided to withdraw the rule and pursue other, more narrowly focused and achievable priorities.

The Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 12866, 58 FR 51735 (September 30, 1993), require semiannual publication in the **Federal Register** of an agenda of regulations. The Regulatory Flexibility Act requires the Department of Labor to publish a regulatory agenda in October and April of each year, listing all of the regulations that the Department expects to propose or promulgate that are likely to have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 602. In addition to a summary of the nature of such regulations, the Regulatory Flexibility Act also requires the Department to include the objectives and the legal basis for the issuance of the rule, and an approximate schedule for completing action on the rule. *Id.* Executive Order 12866 supplements the above obligations and, in substance, requires agencies to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. Executive Order 12866 also requires each agency, as part of the regulatory agenda, to prepare a regulatory plan of the most important ''significant'' regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. In essence, the regulatory plan sets forth an agency's highest priority regulatory actions. The Air Quality rule has not been included on MSHA's regulatory plan since 1994 and was not a priority in recent years.

The regulatory agendas of previous Administrations were seldom limited to only those agenda items that the Agency could realistically complete within a reasonable time. These voluminous agendas promoted the notion that MSHA could advance scores of complicated rulemakings concurrently. This, however, was never the case and is not the case now. For example, MSHA health standards were, and still are, developed by ''committees'' of employees consisting of scientists, economists, industrial hygienists, technical support staff, enforcement/field personnel with expertise in the given area, regulatory specialist, and lawyers. Safety standards were (and still are) developed similarly, requiring many of the same people who worked on health standards. Thus, the number of MSHA employees who were, and are, available to work on a rulemaking project at any given time is limited. Because there were limited numbers of these personnel, an Air Quality rulemaking could not have been developed without transferring personnel from other rulemakings that the Secretary had determined were priorities. At the very least, economists, regulatory specialists, and lawyers would have been required to transfer from other projects, and some field personnel would have been required to put aside their enforcement duties while assisting with rulemaking. Despite the fact that Agency resources were directed to other, higher priority rulemaking projects, previous Administrations continued to list the Air Quality rule on the Department's regulatory agenda as an ongoing rulemaking.

As stated above, the extensive regulatory agendas of the past were not only unrealistic, but fueled misconceptions about the ability of the Department's agencies to simultaneously develop or further vast numbers of concurrent rulemakings. Recognizing that this established practice was outdated and that it undermined the basic function of the Agenda, the Secretary introduced a new approach to the regulatory agenda, limiting it to ''only those rules for which [agencies] could complete the next step in the regulatory process within a 12-month period.'' BNA Daily Labor Report April 22, 2002 (quoting Deputy Secretary of Labor Cameron Findlay). Consequently, a number of regulations were removed from the Department's Agenda. In the fall of 2000, for example, the Department's regulatory agenda contained some 145 rulemaking projects. By comparison, the fall 2003 Agenda contained 79 rules, and the spring 2004 Agenda contained 81 rulemakings. The Secretary's review and reprioritization of each agency's Agenda items was not an occurrence unique to the Department; rather, it was consistent with a federal agency-wide initiative intended to maintain sound regulatory practice. Memorandum from Andrew H. Card, Jr., Assistant to the President and Chief of Staff, to Heads and Acting Heads of Executive Departments and Agencies, January 20, 2001 (66 FR 7702 (January 24, 2001)). The concurring opinion in *Int'l Union* v. *Chao,* 361 F.3d 249 (3d Cir. 2004), candidly addressed this phenomenon by noting that ''there is nothing obscure, and nothing suspect about regulatory policy changes coincident with changes in administration.'' *Id.* at 256. As the concurring opinion observed, each administration embraces its own priority-setting process and regulatory philosophy such that items considered priority by one administration may not be so by another administration. *Id.* Though MSHA has only withdrawn one other proposed rule from its regulatory agenda, Requirements for Approval of Flame-Resistant Conveyor Belts, 67 FR 46431 (July 15, 2002), the Agency routinely removes pre-proposal rulemakings from the Agenda. *See, e.g.*, Bloodborne Pathogens, Department of Labor Unified Agenda, 60 FR 23567 (May 8, 1995); Roof Bolting Machines, Department of Labor Unified Agenda, 65 FR 23056 (April 24, 2000).

In the 13 years between proposal of the Air Quality rule in August 1989 and the September 2002 withdrawal notice, MSHA promulgated approximately 50 final rules. The rules were of varying complexity. Though the majority of these rules were safety standards, several of the standards MSHA promulgated during that period either directly or indirectly addressed some of the health hazards which the Air Quality rule sought to prevent. In any event, the rules listed below consumed much of the Agency's rulemaking resources and constituted the Agency's highest rulemaking priorities as determined by the Secretary for the period in question.

In 1994, MSHA promulgated the abrasive blasting and drill dust control provisions of the proposed Air Quality rule. 59 FR 8318 (February 18, 1994). These standards remain effective in spite of the withdrawal of the remaining phases of the proposed Air Quality rule. The abrasive blasting and drill dust control standards are applicable to all metal, nonmetal, and coal mines. 30 CFR 58.610, 58.620, 72.610, 72.620, 72.630.

In 1996, MSHA issued final ''Safety Standards for Underground Coal Mine Ventilation.'' 48 FR 9764 (March 11, 1996). As noted in the preamble to the ventilation standard, ''the primary function of a mine ventilation system is

twofold, to remove hazardous gases such as methane, and to provide miners with an [sic] respirable environment in areas where they are required to work or travel.'' *Id.* at 9775. Moreover, the preamble to the ventilation final rule states in regard to air quantity, ''[i]t is essential for miners' health and safety that each working face be ventilated by sufficient quantity of air to dilute, render harmless, and carry away flammable and harmful dusts and gases produced during mining.'' *Id.* at 9780. Maintaining adequate ventilation in underground coal mines helps to ensure that miners are not exposed to accumulations of hazardous gases and dusts. MSHA's ventilation standard established a mandatory oxygen content of 19.5% by volume in bleeder entries, and in areas where persons work or travel. 30 CFR 75.321. Sections 58/72.300 of the Air Quality proposal, entitled ''Dangerous Atmospheres,'' proposed an equivalent mandatory oxygen content by volume for all work areas. 54 FR at 35817, 35840 (August 29, 1989). During the period from August 1989 to September 2002, MSHA also promulgated final standards for ''Diesel Powered Equipment.'' 61 FR 55412 (October 25, 1996). The diesel equipment rule requires monitoring and control of gaseous diesel emissions—specifically, carbon monoxide (CO) and nitrogen dioxide (NO_2)—so that miners are protected from exposure to harmful levels of gaseous contaminants. 30 CFR 70.1900. In addition, the diesel equipment rule limits miners' exposure to harmful diesel exhaust contaminants by requiring Agency approval of most diesel engines (30 CFR part 7); minimum ventilating air quantities in areas where diesel equipment is operated (30 CFR 75.325); the use of low-sulfur fuel (30 CFR 75.1901); and the use of clean-burning engines (30 CFR part 7).

The Air Quality rule proposed lowering the PELs for many of the gases found in diesel exhaust, including CO and NO_2. Because the proposed Air Quality rule was to lower these PELs, the diesel equipment rule did not do so. Despite the fact that the CO and NO_2 PELs were not reduced, the diesel equipment rule provides coal miners with a degree of protection from diesel exhaust gases by reducing emissions of those gases, and thereby coal miners' exposure to them. It should also be noted that following publication of the diesel equipment final rule in 1996, MSHA surveyed 23 of 26 mines using diesel equipment in underground coal mines, collecting over 500 samples. MSHA determined that coal miners were not exposed to levels of CO and NO_2 that would have exceeded the standards proposed by the Air Quality rule.

Nonetheless, in March 1997, the UMWA petitioned the U.S. Court of Appeals for the District of Columbia Circuit for a writ of mandamus compelling MSHA to issue standards governing emissions in diesel exhaust. *In re United Mine Workers of America Int'l Union,* 190 F.3d 545 (D.C. Cir. 1999). Specifically, the UMWA sought regulation of two components of diesel exhaust: gases and particulate matter. Following negotiations between MSHA and the UMWA, the parties were able to dispose of the particulate matter portion of the petition, as discussed in further detail in the paragraph below, leaving before the court only the portion of the petition dealing with regulation of exhaust gases. In this regard, the UMWA wanted final standards lowering the PELs for CO and NO_2. With the prospect of court-ordered rulemaking impending, MSHA and the UMWA were able to settle the matter so as to avoid hindrance of Agency action on diesel particulate matter and respirable coal mine dust, both of which the UMWA asserted were of higher priority than diesel exhaust gases. *Id.* at 553. Consequently, the parties ultimately agreed to dismiss the case and to address the UMWA's concerns about gaseous emissions by establishing a diesel exhaust monitoring protocol. These procedures were incorporated into the Agency's directives system and are carried out by coal mine health inspectors during inspections. Coal Mine Health Inspection Procedures Handbook, Chapter 5 ''Diesel Exhaust Gas Monitoring,'' PH89–V–1(14) (December 2000).

As mentioned above, the UMWA also sought regulation of diesel particulate matter through its mandamus petition. During the pendency of the suit, MSHA published a proposed rule for the regulation of diesel particulate matter, 63 FR 17492 (April 9, 1998), and the court dismissed this portion of the UMWA's petition as moot. Consequently, the coal and metal/nonmetal diesel particulate matter rules became priority rulemakings in the years between the Air Quality proposed rule and the September 2002 withdrawal notice.

The final coal diesel particulate matter rule, 66 FR 5526 (January 19, 2001), requires mine operators to restrict diesel particulate matter emissions from certain pieces of equipment to prescribed levels (30 CFR 72.500 to 72.502), and requires underground coal mine operators to train miners about the hazards of diesel particulate matter exposure (30 CFR 72.510). Most of the provisions of the final coal diesel particulate matter rule became effective in March 2001. Three provisions, however, were subject to later effective dates, two of which have already passed. The final provision will become effective in January 2005.

Like the coal diesel particulate matter rule, the final metal/nonmetal diesel particulate matter rule was published on January 19, 2001. 66 FR 5706. The final rule established new health standards for underground metal and nonmetal miners by requiring use of approved equipment and low sulfur fuel, and by setting interim and final concentration limits for diesel particulate matter in the underground mining environment. Several parties, including mine operators and industry associations, filed petitions for review of the final rule, and the United Steelworkers of America intervened. The petitions were consolidated and are pending in the U.S. Court of Appeals for the District of Columbia Circuit. *AngloGold (Jerritt Canyon) Corp. et al.* v. *U.S. Department of Labor,* Nos. 01–1046, 01–1124, 01–1146 (D.C. Cir. filed Jan. 29, 2001). Pursuant to a first partial settlement agreement reached in response to legal challenges to the 2001 metal/nonmetal diesel particulate matter rule, MSHA amended portions of the final rule on February 27, 2002 (67 FR 9180). The revisions addressed the evidence and tagging provisions of the Maintenance standard, as well as the definition of ''introduced'' in the Engine standard. On August 14, 2003 (68 FR 48668), pursuant to a second partial settlement agreement, MSHA initiated additional rulemaking to further amend the final rule. These revisions would revise the interim concentration limit; designate elemental carbon as the surrogate for measuring diesel particulate matter for the interim limit; apply MSHA's longstanding hierarchy of controls used for other exposure-based health standards, including engineering and administrative controls supplemented by respiratory protection, but prohibiting rotation of miners; and revise the requirements for the diesel particulate matter control plan. The legal challenge has been stayed pending completion of additional rulemaking actions.

MSHA's final ''Occupational Exposure to Noise'' rule, 64 FR 49548 (September 13, 1999) was another rulemaking that MSHA determined was a priority and to which the Agency committed considerable rulemaking resources. Once promulgated, the Noise rule replaced standards that provided

inadequate protection of miners' hearing and were more than 20 years old. MSHA estimated that under its previous noise rule, 13.4% of the mining population in the United States would have developed a material hearing impairment during their working lifetime. MSHA concluded that approximately 13,000 coal miners and 24,000 metal and nonmetal miners would have experienced noise-induced hearing loss under the prior standard, and that those miners would substantially benefit from the final rule's effect of improving miners' health and lessening the personal and social hardships resulting from noise-induced hearing loss. As will be explained in further detail in this notice, MSHA continues to commit resources to the implementation of this rule.

On March 11, 2002, MSHA published safety standards for ''Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines.'' 67 FR 10972. The final high-voltage longwall rule allows mine operators to use high-voltage longwall systems without having to obtain a mine-specific petition for modification from MSHA. MSHA considered this rule a priority because the Agency concluded that high-voltage longwalls could be used safely, provided that certain conditions were met. The high-voltage longwall rule accounted for new and improved longwall technology, and established increased protection from electrical hazards, while reducing the paperwork requirements associated with petitions for modification.

During the period in question, MSHA also devoted considerable resources to its ''Hazard Communication'' (HazCom) rule, 67 FR 42314 (June 21, 2002). Similar to the Toxic Release Inventory list that was at issue in *Troy Corporation* v. *Browner*, 120 F.3d 277 (D.C. Cir. 1997), MSHA's HazCom rule is an information dissemination rule that does not contain provisions that require use of engineering and administrative controls to limit exposure to chemicals, exposure monitoring, medical surveillance and transfer, or the use of personal protective equipment. However, the HazCom rule requires mine operators to evaluate the hazards of chemicals they produce or use and provide information to miners concerning chemical hazards; label containers of hazardous chemicals; provide access to material safety data sheets; and train miners about hazardous chemicals to which they might be exposed. Chemicals for which MSHA proposed PELs under the Air Quality proposed rule are subject to the HazCom requirements.

On December 12, 2002, pursuant to its authority derived from § 101(b)(1) of the Mine Act, 30 U.S.C. 811(b)(1), MSHA issued an emergency temporary standard (ETS) addressing underground coal mine emergency evacuations, 67 FR 76658. Section 101(b)(1) of the Mine Act authorizes the Secretary to issue emergency temporary health or safety standards without regard to the mandates of the Administrative Procedure Act, 5 U.S.C. 553, when she determines that ''miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and * * * that such emergency standard is necessary to protect miners from such danger.'' 30 U.S.C. 811(b)(1). Emergency temporary standards become effective immediately upon publication in the **Federal Register**, 30 U.S.C. 811(b)(1), and must be superseded by a mandatory health or safety standard no later than nine months after publication of the emergency standard. 30 U.S.C. 811(b)(3). The issuance of an emergency standard is an extraordinary measure provided for by the Mine Act, but one which MSHA employs when it determines that such a standard is necessary to prevent grave dangers from ''manifest[ing] themselves in serious or fatal injuries or illnesses.'' S. Rept. 181, 95th Cong., 1st Sess. 23 (1977).

Following several fatal and non-fatal coal mine emergencies, MSHA determined that miners were exposed to grave danger when they remained underground or re-entered affected mine areas during mine emergencies presenting an imminent danger due to fire, explosion, or gas or water inundation. MSHA concluded that it was imperative to immediately address proper training and emergency evacuation procedures by way of an ETS. As required by the Mine Act, MSHA had to replace the ETS with final safety standards within nine months of the ETS's publication. Hence, MSHA published its final ''Emergency Evacuations'' rule on September 9, 2003 (68 FR 53037). As with the rules mentioned in the preceding paragraphs, MSHA deemed these rulemakings to be priorities and devoted rulemaking resources accordingly.

The most recently published final rule which represented an MSHA rulemaking priority during the years in question is the ''belt air'' rule. The belt air rule was originally proposed as part of MSHA's rulemaking on ventilation of underground coal mines, but ultimately developed as an independent rulemaking following the Secretary's decision to further review the safety factors associated with the use of belt air to ventilate working places.

On April 2, 2004, MSHA published final safety standards, ''Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed'' (''belt air'' rule) (69 FR 17480). Prior to the effective date of the belt air rule, mine operators were required to obtain a petition for modification (30 CFR part 44) of various safety standards before they were allowed to use intake air passing through the belt air course to ventilate designated locations where miners work. In effect, the belt air rule incorporates the bulk of the safety requirements found in the most recently granted petitions for modification so that mine operators will no longer need to seek a mine-specific petition for modification before using belt air in sections of their mine with three or more entries. By retaining these safety requirements in the rule, miners' safety will be preserved.

Though the above standards do not address all of the hazards that the Air Quality rule was intended to address, MSHA has promulgated several rules in the recent past that directly or indirectly assist in reducing miners' exposure to airborne contaminants. Such rules include those addressing diesel particulate matter, hazard communication, and diesel equipment. MSHA has also addressed diesel exhaust gases, which was proposed as part of the Air Quality rulemaking, through detailed procedures in its Inspection Procedures Handbook. The measure of protection provided to miners from these rules was not available at the time that the Air Quality rule was proposed. In addition, these standards focused on discrete health and safety hazards and reflected an incremental approach to regulating mine safety and health that appears preferable in light of *AFL–CIO*. After the Eleventh Circuit's decision, MSHA made a reasonable and reasoned decision to direct its resources to rulemakings that could be, and were, successfully completed. The decision to reprioritize the Air Quality rule was entirely appropriate and reflects the Secretary's authority to reassess and reorder priorities as necessary and as appropriate.

4. Staleness of Rulemaking Record

In addition to changes in MSHA's rulemaking priorities, the 2002 decision to withdraw the Air Quality proposed

rule was also premised on the staleness of the rulemaking record. As the D.C. Circuit observed, the staleness of the record is not a distinct reason for withdrawing the Air Quality proposed rule. *Int'l Union, UMWA* v. *U.S. Department of Labor*, 358 F.3d 40, 44 (February 20, 2004). However, staleness of the record is a critical concern in determining the level of resources MSHA must be prepared to commit to the project to make it a priority, to the certain exclusion of all other rulemaking priorities. At the time of publication of the September 2002 withdrawal notice, it had been more than 13 years since the rule's proposal, and some 12 years since comments had been received. In accordance with the mandates of the Mine Act, however, MSHA is to consider the latest available scientific data when promulgating mandatory standards dealing with toxic materials or harmful physical agents. Since the Air Quality rule was proposed in 1989, significant new scientific information relating to many of the proposed provisions had developed. Thus, MSHA would have had to essentially start the rulemaking process from the beginning, and evaluate the significance of the risk of material impairment of health, and all of the feasibility issues, on the latest available information.

C. Continuing Reasons for the Withdrawal of the Proposed Rule

1. Changes in Agency Priorities

As discussed previously, MSHA's rulemaking priorities in the years following the promulgation of the abrasive blasting and drill dust control standards made it impossible for the Agency to complete the Air Quality rulemaking. Moreover, since publication of the September 2002 Air Quality withdrawal notice, MSHA's rulemaking priorities have not permitted it to re-propose the rule. The Agency expects that its rulemaking resources will be consumed by other priority rulemakings such that it will not be able to promulgate the Air Quality rule for the foreseeable future. The Department of Labor's 2003–2004 regulatory plan, 68 FR 72520 (December 22, 2003), identifies three high priority initiatives for MSHA, noting that items listed in the regulatory plan are those ''issues most clearly needing regulatory attention.'' *Ibid.* For MSHA, the Secretary has identified asbestos, metal/nonmetal diesel particulate matter, and the two coal mine dust rules as priority rulemakings. *Ibid.*

On March 29, 2002, MSHA published an advanced notice of proposed rulemaking declaring its intent to initiate rulemaking on ''Measuring and Controlling Asbestos Exposure.'' 67 FR 15134. The Agency also held six public meetings between April 2002 and June 2002 to allow for early participation in the rulemaking process by interested parties. The importance of such a rulemaking is highlighted in the Department of Labor's Office of Inspector General's (OIG) recommendations to MSHA to reduce the risk of incidents similar to those that took place in Libby, Montana. ''Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana.'' USDOL Office of the Inspector General, Office of Analysis, Complaints and Evaluations, Report No. 2E–06–620–0002 (March 22, 2001). MSHA's Air Quality proposed rule recognized the importance of controlling asbestos exposure, and proposed a PEL consistent with then-current levels promulgated by OSHA in its Air Contaminants standard. In 1994, OSHA promulgated a revised substance-specific asbestos standard that lowered the PEL to an eight-hour time-weighted average limit of 0.1 fiber per cubic centimeter (f/cc) and lowered the short-term exposure limit to 1.0 f/cc as averaged over a sampling period of 30 minutes. 59 FR 40964 (August 10, 1994). In the wake of the illnesses and fatalities in Libby, Montana, MSHA's practice has been to encourage mine operators to comply with the current OSHA PEL, as MSHA's metal/nonmetal and coal asbestos exposure standards are some 20-fold higher than OSHA's. MSHA Program Information Bulletin No. P–0003, ''Potential Exposure to Airborne Asbestos on Mining Properties'' (March 2, 2000). For all of the above reasons, MSHA feels strongly that promulgating an asbestos standard must remain one of the Agency's top rulemaking priorities.

As discussed elsewhere in this document in further detail, MSHA is in the process of finalizing the metal/nonmetal diesel particulate matter rule pursuant to the litigation in *AngloGold (Jerritt Canyon) Corp. et al., supra*, and is devoting significant resources to this Agency priority. As MSHA is currently doing with the coal diesel particulate matter rule, MSHA anticipates providing training to both its inspectorate and stakeholders, providing compliance assistance, and engaging in other efforts following the promulgation of revisions to the final rule in order to ensure its smooth implementation. MSHA's implementation initiatives will require a considerable commitment of Agency resources and personnel.

Additional rulemaking priorities which will consume significant agency resources are the respirable coal mine dust rules. MSHA's proposed rule for the ''Determination of Concentration of Respirable Coal Mine Dust'' (Single Sample) would determine that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. 65 FR 42068 (July 7, 2000). The related ''Verification of Underground Coal Mine Operators'' Dust Control Plans and Compliance Sampling for Respirable Dust'' (Plan Verification) would require mine operators to verify and periodically monitor, through sampling, the effectiveness of the dust control parameters for each mechanized mining unit (MMU) specified in the mine ventilation plan. 65 FR 42122 (July 7, 2000). The Plan Verification proposed rule would significantly improve miners' health protection by ensuring that ventilation plans were verifiable and implemented, thereby limiting the exposure of individual miners to respirable coal mine dust. In combination, these rules would comprise MSHA's revised program to meet the Mine Act's § 202(b)(2) requirement that miners' exposure to respirable coal mine dust be maintained at or below the applicable standard on each shift. 30 U.S.C. 842(b)(2).

Because of the significant public reaction and comment to these proposals, and while waiting for the availability of a Personal Dust Monitor, MSHA has indefinitely extended the comment period for these rules. Plan Verification, 68 FR 39881 (July 3, 2003); Single Sample, 68 FR 47886 (August 12, 2003). MSHA is awaiting the National Institute for Occupational Safety and Health's (NIOSH's) development and evaluation of a Personal Dust Monitor, which MSHA believes could be effective in helping to provide a real-time read-out of dust exposure, thus helping to prevent the development of black lung disease in miners. In-mine testing and evaluation of the devices has begun and will most likely continue into 2005.

Although not listed in the Department's Regulatory Plan, the Secretary has identified several other rulemakings for development that ''advance the Department's goals'' and are consistent with each agency's ''available resources.'' Department of Labor Unified Agenda, 68 FR 73196 (December 22, 2003). For MSHA, these rules, enumerated in the Department's most recent Agenda, include rulemakings on high voltage continuous mining machines, *id.* at 73213, shaft and slope construction worker training,

ibid., and electrical product approval, *id.* at 73214.

On July 16, 2004, 69 FR 42812 (July 16, 2004) MSHA published a proposed rule, ''High-Voltage Continuous Mining Machines,'' that would establish design requirements for approval of high-voltage continuous mining machines operating in face areas of underground mines. The proposed rule would also establish new mandatory electrical safety standards for the installation, use, and maintenance of high-voltage continuous mining machines used in underground coal mines. These provisions would enable mines to utilize high-voltage continuous mining machines with enhanced safety protection from fire, explosion, and shock hazards. Existing 30 CFR 75.1002, *Installation of electric equipment and conductors; permissibility,* does not permit the use of high-voltage continuous mining machines in certain areas of the mine. Currently, mine operators must petition MSHA for a modification of the standard, pursuant to section 101(c) of the Mine Act, 30 U.S.C. 811(c), prior to using high-voltage continuous mining machines. From January 1997 to October 2003, MSHA granted 38 petitions for the use of high-voltage continuous mining machines. Others are currently being processed. MSHA is confident that promulgation of this rule will improve miners' safety while eliminating the need to proceed through the often burdensome administrative process associated with granting a petition to permit the use of high-voltage continuous mining machines. MSHA is currently holding public hearings on this proposed rule and, as with the other rulemakings discussed above, MSHA anticipates a considerable amount of resources will be committed to promulgating the high-voltage continuous mining machine standards.

On July 16, 2004, 69 FR 42842, following a record of fatalities attributable to the lack of training received by shaft and slope construction workers, MSHA published a proposed rule entitled ''Training Standard for Shaft and Slope Construction Workers at Underground Mines'' that would remove existing language which exempts shaft and slope construction workers from the requirement to receive Part 48 training. Under the proposal, shaft and slope construction workers would be treated like extraction and production miners in that they would be required to receive Part 48 training. This rule will help eliminate fatalities such as the October 4, 1991, fatality at the Gary No. 50 Mine in Pineville, West Virginia; the May 17, 1996, fatality at the Wabash Mine in Keensburg, Illinois; and the January 22, 2003, fatalities at the McElroy Mine in Marshall County, West Virginia.

Finally, MSHA has determined that updating its regulations on electrical product approval is a priority. Part 18 of 30 CFR, entitled ''Electric Motor-Driven Mine Equipment and Accessories,'' sets forth the requirements to obtain MSHA approval of electrically operated machines and accessories intended for use in underground mines, as well as other related matters, such as approval procedures, certification of components, and acceptance of flame-resistant hoses and conveyor belts. Aside from minor modifications, Part 18 has remained unchanged since its promulgation in 1968 under the Federal Coal Mine Safety Act of 1952. MSHA's update of these outdated regulations will improve the efficiency of the approval process, recognize new technology, and add quality assurance provisions.

MSHA expects that the above rulemakings will consume the majority of its rulemaking resources for the foreseeable future. In addition to the resources that will be required to promulgate the foregoing priority rulemakings, however, MSHA is expending resources to facilitate implementation of its new final rules. For example, MSHA's implementation of the Occupational Exposure to Noise rule is consuming a fair amount of the Agency's resources, including many of the same personnel who would be required to assist in completion of an Air Quality standard. In an effort to improve understanding of and compliance with the Noise rule, MSHA has conducted numerous stakeholder meetings, developed new compliance assistance documents, updated existing compliance assistance documents, and conducted training of some of its inspectorate. MSHA is in the process of providing stakeholder training, additional training to its inspectorate, updating its procedural guides, and evaluating new noise technologies. MSHA will continue to allocate resources to implement the Noise rule until it is confident that mine operators have received sufficient compliance assistance, miners understand their rights, and MSHA inspectors have received the necessary training to properly enforce the standard.

With the January 19, 2001, promulgation of the coal diesel particulate matter rule, MSHA is taking efforts similar to those described in the preceding paragraph to ensure that its stakeholders understand the coal diesel particulate matter rule, and MSHA inspectorate are trained to properly enforce the rule. Like the Noise implementation efforts, MSHA anticipates that implementation of the coal diesel particulate matter rule will require a considerable commitment of Agency resources and personnel for the foreseeable future.

It should also be noted that MSHA is publishing a Request for Information on respirable crystalline silica to determine an appropriate course of action in response to respirable crystalline silica exposures. A new respirable crystalline silica standard was also proposed as part of the Air Quality rule. Thus, while a comprehensive Air Quality rulemaking will no longer be pursued by MSHA, significant elements of the proposed rule continue to be addressed in incremental, more manageable portions by individual rulemakings. MSHA will continue to review information related to individual substances to determine whether there is evidence of significant risk. If so, MSHA will evaluate whether to engage in a substance-specific rulemaking.

2. Impact of Resuming the Air Quality Rulemaking

The impact of resuming the Air Quality rulemaking would be detrimental to MSHA's currently designated priority rulemakings. The resources that would be required to resume the Air Quality rulemaking would be enormous and would come at the expense of the rulemakings cited in the preceding pages. MSHA's toxic substance and harmful physical agent rulemakings have historically been resource-intensive and protracted, even when not laden with the legal uncertainties that encumber the Air Quality rulemaking. Because MSHA is required to present evidence that the existing PEL for each substance or contaminant exposes miners to a significant risk of material impairment of health or functional capacity, developing a judicially sustainable final rule would be a very lengthy and complex endeavor. The scientists that would be required to gather, review and analyze the immense amount of scientific data would have to be reassigned from other health rulemakings. The Agency has also lost a considerable degree of institutional knowledge relating to the proposed rule due to retirement. As stated elsewhere in this document, MSHA employs a limited number of staff assigned exclusively to rulemaking activities, and it is nearly impossible for these employees to advance simultaneously on numerous complex rulemaking fronts. Many of the same employees, including MSHA's economists,

technical support specialists, standard and regulation drafting personnel, and lawyers are required in both health and safety rulemakings, and the orderly implementation of new rules. These employees are also engaged in assisting in the day-to-day functioning of the Agency by undertaking such tasks as replying to incoming correspondence and aiding field personnel in appropriately carrying out the mandates of the Mine Act. Thus, rulemaking on even one substance or component proposed in the Air Quality rule would require reassignment of personnel and resources, thus delaying completion of other rules and impeding implementation of new rules.

3. Use of a Non-Regulatory Approach

At the present time, MSHA is using non-regulatory approaches to address the hazards miners may encounter from contact with the substances or contaminants that would have been regulated by the Air Quality rule. MSHA continues to introduce and promote educational and outreach campaigns to inform stakeholders about health and safety issues of which they should be aware. One such notable educational campaign is the Agency's initiative to alert miners and mine operators about the hazards associated with asbestos exposure. In January 2000, MSHA initiated comprehensive compliance assistance related to asbestos exposure. This compliance assistance included activities such as training MSHA inspectors to recognize naturally occurring asbestos and to sample where it is suspected; assisting in the development of clean-up and monitoring procedures; discussing hazards of asbestos exposure with miners and the mine operator; providing mine operators with names of accredited laboratories that perform asbestos analysis; assisting in the implementation of a respiratory protection program; and instructing in recognition and avoidance of asbestos.

In addition to the asbestos compliance assistance activities, MSHA maintains a practice of informing mine operators by written communication when an MSHA asbestos sample taken at their facility is found to be over the OSHA PEL of 0.1 fiber per cubic centimeter (f/cc). Another current MSHA practice is to encourage mine operators to comply with the OSHA asbestos PEL. MSHA Program Information Bulletin No. P–0003, ''Potential Exposure to Airborne Asbestos on Mining Properties'' (March 2, 2000). Though MSHA has no authority to enforce the OSHA 0.1 f/cc PEL, the Agency continues to take a proactive approach to educating miners and mine operators about the health risks associated with exposure to asbestos exceeding the 0.1 f/cc limit. MSHA continues to encourage miners and mine operators to take precautionary measures to avoid asbestos exposure.

MSHA has posted valuable information addressing asbestos hazards in the mining industry on its Web site, including links to numerous outside resources. This information can be accessed at MSHA's source page for asbestos, *http://www.msha.gov/asbestos/asbestos.htm*.

Consistent with its Occupational Illness and Injury Prevention Program, MSHA's Web site also contains information related to the prevention of various other health and safety illnesses and injuries. For example, MSHA's Web site includes health alerts that address substances or topics proposed in the Air Quality rule. These alerts include: Working with Mercury; Silica Exposure of Underground Coal Miners; Silica Exposure of Surface Coal Miners; Working in Confined Spaces; and Welding Fumes Sampling. Topic-specific health documents include Arsenic; Effects of Blasting on Air Quality; Carbon Monoxide; Hazardous Chemicals at Work; and Respiratory Protection. MSHA also posts on its Web site ''best practices'' developed by volunteer teams of stakeholders. Best practices are intended to provide practical, effective solutions to health and safety risks that might be found in the mining environment. Recent best practice recommendations address ''Reducing Silica Exposure'' and ''Underground Air Quality.'' These documents can be accessed through MSHA's Web site, *http://www.msha.gov*.

Given the current circumstances, MSHA believes that a non-regulatory approach is the most appropriate manner to address the hazards addressed in the Air Quality proposed rule. MSHA will continue to assess the risks posed by the contaminants included in the Air Quality proposed rule, and will ascertain whether rulemaking for any individual contaminant is appropriate.

4. Meeting With the UMWA

On May 5, 2004, at the request of the UMWA, MSHA and the Union met to discuss issues concerning Air Quality. The parties generally discussed whether there was a need for MSHA to more regularly assess and update toxic substances standards. In this regard, the parties discussed the Agency's capability of doing so, the resources that would be involved, and whether there was a suggested process for doing so. The parties also discussed the appropriate role of NIOSH's recommended exposure levels (RELs) versus the appropriate role of the ACGIH's TLVs. Although the UMWA did not have a specific proposal for addressing the outstanding issues related to Air Quality, MSHA and the UMWA agreed to exchange information and to further explore and deliberate options available to the Agency to address those outstanding issues.

D. Conclusion

In summary, the Mine Act grants the Secretary of Labor exclusive authority to determine that a proposed rule should be withdrawn, so long as she publishes reasons for her decision not to promulgate the rule. With the September 2002 publication of a withdrawal notice, the Secretary identified three specific reasons for her determination that the Air Quality rulemaking should not continue: the effect of *AFL–CIO*, changes in Agency priorities, and the staleness of the rulemaking record. Each of these reasons was necessarily connected to the enormous commitment of resources that resumption of the rulemaking would require. The *AFL–CIO* holding illustrates that MSHA would have had to expend a substantial amount of resources to ensure that a final rule would not result in MSHA's susceptibility to a formidable, vigorous, and possibly successful legal challenge. With respect to the Agency's change in priorities, the Mine Act affords the Secretary broad authority to set and order her rulemaking priorities. The Secretary properly exercised that discretion by determining not to proceed with the Air Quality rulemaking, particularly in light of the resources that would be consumed by such a rulemaking.

MSHA has also identified several reasons why it continues to devote its resources to current rulemaking priorities, and the determination that a non-regulatory approach is reasonable in light of existing circumstances. For the reasons stated, the Secretary has concluded that other rulemakings, most notably the metal/nonmetal diesel particulate matter, respirable coal mine dust, and asbestos rules, constitute MSHA's highest priorities and that the Agency's resources should be focused accordingly. The progress of MSHA's higher priority rulemakings would be stymied by the tremendous quantity of resources that would be redirected toward an Air Quality rulemaking.

Although there are potentially thousands of health and safety risks that

MSHA could regulate, it must focus its resources on risks that are significant, that the Agency has deemed to be the highest priorities, and that the Secretary has found to be appropriate. If data or information provides evidence of a significant risk that MSHA has not addressed, the Agency will evaluate whether rulemaking should be initiated for the individual substance or agent. This document does not preclude any Agency action that the Secretary may find appropriate in the future.

For the reasons stated herein, with the exception of provisions published at 59 FR 8318 (February 18, 1994), the proposed rule is withdrawn.

Signed at Arlington, Virginia, this 15th day of November, 2004.

David D. Lauriski,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 04–25678 Filed 11–18–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB43

Federal Records Management; Media Neutral Records Schedules

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to amend its regulations relating to scheduling Federal records to make existing approved records schedules and future records schedules applicable to bodies of records regardless of the medium in which the records are created and maintained. Both the agency (in submitting the schedule) and NARA (in approving the schedule) would be able to specify that certain disposition authorities are valid only for the current media/format of the records. Although agencies currently are permitted to submit ''media-neutral'' records schedules, most existing records schedules were developed for hard-copy (usually paper) recordkeeping systems and do not state that they apply to records in other formats. Therefore, agencies have been required to submit new schedules when they convert from a hard-copy system of records to an automated (electronic) system, including special media records (such as still pictures, aerial photography, maps, charts, drawings, motion picture film, analog videotape, and analog sound recordings). This proposed rule would reduce the workload for both agencies and NARA, allowing both to focus resources on critical records management needs.

DATES: Comments are due by January 18, 2005.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: RIN 3095–AB43'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: Send comments to *comments@nara.gov.* If you do not receive a confirmation that we have received your e-mail message, contact Nancy Allard at 301–837–1477.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or fax 301–837–0319.

SUPPLEMENTARY INFORMATION:

Background

Increasingly, agencies are automating their business processes in order to better meet their business needs. In many instances, the hard-copy records that new electronic systems replace are covered by a NARA-approved records schedule. Agencies currently are required to submit a Standard Form (SF) 115, Request for Records Disposition Authority, to obtain a new disposition authority when previously scheduled hard-copy records are now being created and maintained electronically. The only exceptions to this policy have been when the agency's approved schedule is media neutral or the records are covered by the General Records Schedules or by an agency-specific schedule that relates to administrative or housekeeping matters.

Proposed Regulatory Changes

As part of our Records Management Initiatives, we have re-examined this policy and determined that changes should be made to the regulations. This proposed rule would:

(1) Establish NARA policy that new records schedules submitted to NARA for approval on or after the effective date of the final rule will be considered media neutral (*i.e.*, the dispositions will apply to the recordkeeping copies of the described files in all media) unless the schedule identifies a specific medium for a specific series. This policy is reflected in the proposed change to 36 CFR 1228.24(b). NARA also proposes to modify 36 CFR 1228.24(b) and 1228.28(b) to make it clear that agencies still must identify special media records (*e.g.*, still pictures, motion pictures and videos, maps, aerial photography, etc.) when they submit schedules.

(2) Require agencies to notify NARA within 45 days when converting records systems containing permanent records from hard-copy format to electronic medium, including special media records. As part of the notification, agencies would provide information about the format(s) and volume of records in the electronic system,

(3) Authorize agencies to apply existing previously approved agency records schedules that cover hard-copy temporary records to those records when they are created electronically, if *all* of the following conditions are met:

- The content and function of the records has not changed (*i.e.*, the electronic records do not contain information that is substantially different from the information included in the hard-copy series, the electronic records are used for the same purpose as the hard-copy records, the underlying business processes and the regulations or other authorities from which records stem remain the same, etc.)
- The records relate to program matters and are scheduled for disposal less than 20 years after cut-off, or relate to administrative (housekeeping) matters, and
- The records are not covered by one or more exclusions in the proposed § 1228.31(a)(3).

This authorization will apply to the vast majority of agencies' records series. NARA estimates that more than 90 percent of agency series have retention periods of less than 20 years.

(4) Require agencies to submit a new SF 115 to obtain disposition authority for electronic versions of previously scheduled hard-copy temporary records with a retention period of 20 years or longer after cut-off. We estimate that less than ten percent of an agency's record series would be subject to this requirement. (If such records are already covered by a media neutral schedule item or conversion to electronic form was approved in the current schedule, this requirement does not apply.) As described later in this **SUPPLEMENTARY INFORMATION**, NARA expects that the

agency and NARA will be able to use an expedited process for review and approval of such schedules.

Explanation of New Policy

NARA's long experience with scheduling electronic records has shown that it is the basic content and function of records that determines their value in almost all cases. It is very rare that conversion of a series of records from hard-copy to electronic form changes its underlying value. That said, with the enhancements electronic recordkeeping brings (compactness, manipulability, and enhanced search capabilities), it is important to provide a safety net to further ensure that we are able to capture the rare series that is temporary in hard copy form but permanent in an electronic format. There are two situations where this safety net is being applied: temporary records with lengthy (20 years or more) retention periods, and certain types of temporary records with retention periods of less than 20 years.

Most temporary records that are scheduled for a retention period of 20 years or more in hard copy will also be temporary if converted to an electronic format. However, such records typically have significant legal rights implications or are needed for a lengthy period to ensure government accountability. Consequently, proposed § 1228.31 requires that agencies submit a SF 115 when they convert a temporary hard-copy series with a retention period of 20 years or more after cut-off. This will enable NARA to appraise the electronic records and, if warranted, designate them as permanent. If records with a retention period of 20 years or more are covered by a previously approved media neutral schedule item or by a previously approved schedule item for hard-copy records that authorizes the disposal of those records after they have been converted to an electronic format, NARA has already determined that the conversion of the records to an electronic format will not render them more valuable.

NARA also has determined that certain types of existing temporary records with a retention period of less than 20 years after cut-off (cut-off is when the file or transaction is complete) are not eligible for automatic application of the existing hard-copy disposition authority to the records when they are created on an electronic system. These exclusions are temporary program records that:

- Are covered by approved schedule items that explicitly exclude electronic records;
- Cover Web versions of hard-copy records;
- Document observations of natural events or the natural environment (*e.g.*, weather, water levels, topographic features, air quality, etc.); or
- Consist of raw, unsummarized demographic or economic data collected for input into studies and statistical reports (*e.g.*, data on wages and prices, education levels, health care, etc.).

The first exclusion (where the schedule approved for hard copy records explicitly excludes electronic versions) covers situations where NARA reserved the right to re-evaluate the temporary nature of records when NARA approved the media neutral schedule. The exclusion for Web records reflects NARA's belief that the approved retention period for a series of records in hard-copy (*e.g.*, press releases or publications) may be longer than what is needed for Web versions. The third and fourth exclusions address the potential for such records, when automated, to be more valuable to the creating agency for additional purposes or to other researchers.

For permanent records, we propose that agencies must notify NARA within 45 days of the conversion to an electronic system. As part of the notification, an agency must provide the series identification (schedule item), and information on the format(s) of the electronic records and their expected volume. Since schedules developed for permanent hard copy records typically provide for the transfer of records to the National Archives after a longer period of time has elapsed than is advisable in the case of electronic records, after the review, NARA will contact the agency concerning when the agency can transfer the electronic records to us. NARA and the agency may decide to establish revised transfer instructions for the electronic records by making ''pen-and-ink'' changes to the previously approved transfer instructions. We specifically invite agency comments on whether the proposed notification process outlined here would be less work for the agency than submission of a new SF 115.

In cases where the proposed rule requires submission of a new SF 115 (temporary records with retention periods of 20 years or more after cut-off and certain other temporary records), NARA encourages agencies to use a streamlined review and sign-off process. For its part, NARA will process these SF 115s on an expedited basis also.

NARA will remind agencies that this proposed rule does not change NARA's longstanding policy that a new schedule must be submitted for approval if the nature of a previously scheduled series changes in a substantial way, *i.e.*, the electronic versions of a previously scheduled hard-copy series contain significantly more information than the hard-copy records or are used in significantly different ways. NARA will also suggest to agencies that they may, as part of re-engineering agency processes, determine that the records should be scheduled in larger aggregations or ''big buckets'' to facilitate disposition through automated systems.

In a related action to this proposed rule, NARA will modify the General Records Schedules (GRS) to authorize agencies to apply previously approved agency records schedules to the electronic versions of temporary records if the NARA-approved retention period is less than 20 years (except for electronic records that are derived from or replace hard-copy records excluded by proposed § 1228.31(a)(2)). Agencies already have authority under GRS 20, Item 3, to apply the GRS disposal authority when the agencies move from hard copy to electronic systems for records covered by an agency-specific schedule for administrative/housekeeping records or by the GRS, except for those few series where the GRS specifically requires submission of a SF 115 when the records are maintained in electronic form.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1228 of title 36, Code of Federal Regulations, as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Amend § 1228.24 by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5) respectively, and adding new paragraph (b)(3) to read as follows:

§ 1228.24 Formulation of agency records schedules.

* * * * *

(b) * * *

(3) Records schedules submitted to NARA for approval on or after [the effective date of the final rule] are media-neutral, *i.e.*, the disposition instruction applies to the described records in all media, unless the schedule identifies a specific medium for a specific series.

* * * * *

3. Add § 1228.31 to read as follows:

§ 1228.31 Authority to apply previously approved schedules to electronic records.

(a) *Temporary program records with retention periods of less than 20 years after cut-off.* Agencies may apply disposition authorities for temporary program records in previously approved schedules to the electronic versions of those records if:

(1) The content and function of the records has not changed significantly (*i.e.*, the electronic records do not contain information that is substantially different from the information included in the hard-copy series, the electronic records are used for the same purpose as the hard-copy records, the underlying business processes and the regulations or other authorities from which records stem remain the same, etc.);

(2) The records are scheduled for disposal less than 20 years after cut-off; and

(3) The records are not derived from or replace hard-copy records that are covered by schedule items that explicitly exclude electronic records; are not web versions of hard-copy records; do not document observations of natural events or the natural environment (*e.g.*, weather, water levels, topographic features, air quality, etc.); or do not consist of raw, unsummarized demographic or economic data collected for input into studies and statistical reports (*e.g.*, data on wages and prices, education levels, health care, etc.).

(b) *Temporary program records with retention periods of 20 years or more after cut-off.* Agencies must submit an SF 115 when they convert temporary program records with approved retention periods of 20 years or more after cut-off to electronic media, unless the records are covered by a previously approved media neutral schedule item or by a previously approved schedule item that authorizes the disposal of hard copy records after they have been converted to an electronic format.

(c) *Temporary administrative or housekeeping records.* Agencies may apply previously approved agency schedules or the General Records Schedules to the electronic versions of temporary records that relate to administrative (housekeeping) matters if the approved agency schedule or the GRS does not specifically require submission of a SF 115 when the records are maintained in electronic form.

(d) *Permanent records.* (1) Agencies must notify NARA (NWML) within 45 days of implementation of an electronic system that will maintain permanent records that have been scheduled as permanent in hard-copy form, including special media records as described in 36 CFR 1228.266 and 1228.268.

(2) The notification must contain the:

(i) Name of the electronic system;

(ii) Name of the agency and organizational unit that has the records;

(iii) Current disposition authority reference;

(iv) Annual volume of records created; and

(v) Format of the records.

(3) NARA and agencies will change the previously approved transfer instructions for the series if necessary to incorporate the requirements for electronic records in 36 CFR 1228.28(b)(8)(i).

Dated: November 15, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–25691 Filed 11–18–04; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–295–0470b; FRL–7834–1]

Revisions to the California State Implementation Plan, Great Basin and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Air Pollution Control District (GBAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve local rules concerning definitions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 20, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Fl., Ventura, CA 93003–5417.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: GBAPCD 101 and VCAPCD 2. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 5, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–25626 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7839–2]

Land Disposal Restrictions: Site-Specific Treatment Variance for Selenium Waste for Chemical Waste Management, Chemical Services LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today proposing to grant a site-specific treatment standard variance from the Land Disposal Restrictions (LDR) treatment standards for a selenium-bearing hazardous waste generated by the glass manufacturing industry. EPA is proposing to grant this variance because the chemical properties of the waste differ significantly from those of the waste used to establish the current LDR treatment standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petition has adequately demonstrated that the waste cannot be treated to meet this treatment standard. In addition, EPA is also proposing to modify an existing treatment variance for this same waste that has been previously granted to another treatment facility.

In the ''Rules and Regulations'' section of the **Federal Register**, we are publishing a parallel direct final rule that would grant this site-specific treatment variance without prior proposal because we view this action as noncontroversial and we anticipate no significant adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If, however, based on today's proposed rule, we receive significant adverse comment, we will withdraw the direct final action and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on the proposed variance must do so at this time.

DATES: Written comments must be received by December 20, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Comments may be submitted electronically, by mail, or through hand delivery/courier. Comments may be mailed to the EPA Docket Center—OSWER Docket, Environmental Protection Agency, Mailcode: 5305 T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2004–0009. Follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Juan Parra at (703) 308–0478 or *parra.juan@epa.gov,* Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

In this document, EPA is proposing to grant a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for a selenium-bearing hazardous waste from the glass manufacturing industry. This selenium waste will be treated by Chemical Waste Management, Chemical Services LLC (CWM). In addition, EPA is proposing to modify an existing treatment variance for the same waste granted to Heritage Environmental Services LLC. We have explained our reasons for these actions in the preamble to the direct final rule. For further information, please see the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

EPA has established an official public docket for this action under Docket ID No. RCRA–2004–0009. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the EPA Docket Center—OSWER Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Center Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0272.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* You can also go to the federal-wide eRulemaking site at *http://www.regulations.gov* to submit comments.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET 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 EDOCKET. 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 EDOCKET. EPA's policy is that copyrighted material will not be placed in EDOCKET but will be available only in printed, paper form in the official 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 EDOCKET 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 EDOCKET. 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 EDOCKET. Public comments that are mailed or delivered to the Docket will be scanned and placed in EDOCKET. Where practical, physical objects will be photographed, and the photograph will be placed in EDOCKET along with a brief description written by the docket staff.

You may submit comments electronically, by mail, 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.

II. Description of Proposed Amendments

EPA is proposing to grant a variance to Chemical Waste Management, Chemical Services LLC (CWM) to stabilize a selenium-bearing waste from Guardian Industries Corp. (Guardian) at their RCRA permitted facility in Model City, New York. If this proposal is finalized, CWM may treat the specific waste to an alternate selenium treatment standard of 28 mg/L, as measured by the TCLP, for the Guardian waste. CWM may dispose of the treated waste in a RCRA Subtitle C landfill, provided they meet the applicable LDR treatment standards for any hazardous constituents in the waste.

EPA is also modifying the existing alternative treatment standard for the Guardian selenium waste that EPA had previously granted to Heritage Environmental Services LLC to be consistent with the levels that CWM has demonstrated as BDAT for this selenium waste (69 FR 6567, February 11, 2004).

List of Subjects in 40 CFR Part 268

Environmental protection, hazardous waste, selenium, variance.

Dated: November 10, 2004.

Thomas P. Dunne,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–25717 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 223
Friday, November 19, 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

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Snowflake, Arizona. The purpose of the meeting is to review and approve projects for funding.

DATES: The meeting will be held December 3, 2004, at 12:30 p.m.

ADDRESSES: The meeting will be held at the Silver Creek Campus of Northland Pioneer College, Symposium Room (LC101), located on Highway 77, Snowflake, Arizona. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee staff three weeks before the meeting. Opportunity for public input will be provided.

Dated: November 1, 2004.

Elaine J. Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 04–25723 Filed 11–18–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: December 19, 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:

Additions

On September 17, and September 24, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 56037 and 57261) 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 impact of the additions on the current or most recent contractors, the Committee has determined that the products 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 to the Government.

2. The action will 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 addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: F–15 Fuel Tank Foam Kits.
1560–01–509–2207FX (#1 Fuel Tank Foam Kit).
1560–01–509–2208FX (#2 Fuel Tank Foam Kit).
1560–01–509–2210FX (#3A Fuel Tank Foam Kit).
1560–01–509–2214FX (Right Auxiliary Fuel Tank Foam Kit).
1560–01–509–2216FX (#1 Fuel Tank Foam Kit).
1560–01–509–2219FX (#3A Fuel Tank Foam Kit).
1560–01–509–2222FX (#3B Fuel Tank Foam Kit).
1560–01–509–2224FX (Right Auxiliary Fuel Tank Foam Kit).
1560–01–509–2225FX (#3B Fuel Tank Foam Kit).
1560–01–509–2653FX (#3A Fuel Tank Foam Kit).
1560–01–509–2654FX (#1 Fuel Tank Foam Kit).
1560–01–509–2658FX (Left Auxiliary Fuel Tank Foam Kit).
1560–01–509–3744FX (#1 Fuel Tank Foam Kit).
NPA: Middle Georgia Diversified Industries, Inc., Dublin, Georgia.
Contract Activity: Warner Robins Air Logistics Center/LFK, Robins AFB, Georgia.

Product/NSN: Tea Light Candles.
Strawberry—M.R. 488.
Unscented—M.R. 487.
Vanilla—M.R. 486.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.
Contract Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Deletions

On September 24, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 57261/62) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer 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 may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may 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 deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Product/NSN: Enamel, Lacquer, 8010–00–935–7085.
NPA: None currently authorized.
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.
Product/NSN: Germicidal Cleaner/Degreaser, 7930–01–393–6756.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: None currently authorized.
Product/NSN: Portfolio, Plastic Envelope.
7510–00–995–4852.
7510–00–995–4856.
7510–00–NIB–0267.
7510–00–NIB–0268.
NPA: Bestwork Industries for the Blind, Inc., Runnemede, New Jersey.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Solvent, Correction Fluid. 7510–01–013–9215.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Standard Bus Equipment, 5999–00–NSH–0001.
NPA: Sheltered Workshop for the Disabled, Inc., Binghamton, New York.
Contract Activity: U.S. Coast Guard, Dept. of Transportation, Washington, DC.
Product/NSN: Tape, Postage Meter. 7530–00–912–3925.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Brick Joint Cleaning, Andersonville National Historic Site, Andersonville, Georgia.
NPA: Macon County MR Services Center, Montezuma, Georgia.
Contract Activity: Department of the Interior, Reston, Virginia.
Service Type/Location: Janitorial/Custodial, Andersonville National Historic Site, Andersonville, Georgia.
NPA: Macon County MR Services Center, Montezuma, Georgia.
Contract Activity: Department of the Interior, Reston, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–25707 Filed 11–18–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee is proposing to delete from the Procurement List services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: December 19, 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.

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 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 services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Commissary Shelf Stocking & Custodial, Brooks Air Force Base, Texas.
NPA: Bexar County Mental Health Mental Retardation Center, San Antonio, Texas.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Kelley Air Force Base, Texas.
NPA: Bexar County Mental Health Mental Retardation Center, San Antonio, Texas.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–25708 Filed 11–18–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees

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 Alabama, Arkansas, Louisiana and Mississippi Advisory Committees will convene at 1:30 p.m. and adjourn at 3:30 p.m. on Wednesday, December 15, 2004. The purpose of the conference call is to plan for future activities in 2005.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code 29789882. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of

the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Thursday, December 9, 2004. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 8, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–25683 Filed 11–18–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 041109314–4314–01]

Service Annual Survey for 2004

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the 2004 Service Annual Survey (SAS).

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 763–7089.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The SAS provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. The SAS now covers all or some of the following nine sectors: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administrative and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt. These data are not publicly available from nongovernment or other government sources.

Based upon the foregoing, the Census Bureau is conducting the 2004 SAS for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422.

Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Dated: November 16, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–25706 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2004]

Foreign-Trade Zone 167—Brown County, WI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Brown, Wisconsin, grantee of FTZ 167, requesting authority to expand the zone in Brown County and Winnebago County, Wisconsin, within the Green Bay Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 12, 2004.

FTZ 167 was approved on August 23, 1990 (Board Order 483, 55 FR 35916, 9/4/90). The zone project currently consists of the following site in Brown County: *Site 1* (2,364 acres): Site 1A (60 acres)—located at South Point Road and Airport Road adjacent to Austin Straubel Airport in Ashwaubenon; Site 1B (1,654 acres)—Austin Straubel Airport located in Ashwaubenon and Hobart; and, Site 1C (650 acres)—Ashwaubenon Industrial Park located at Adam Drive and Ridge Road in Ashwaubenon and Hobart.

The applicant is now requesting authority to expand the general-purpose zone to include additional sites in Brown County and Winnebago County:

Expand *Site 1* to include two additional parcels in the Village of Ashwaubenon, adjacent to the existing site:

- Proposed Site 1D (20 acres)—Seven Generations Corporation (Oneida Tribe Economic Development) facility located west of Packerland Drive, north of Partnership Drive, east of Commodity Lane and south of Glory Road (listed as Parcel A in the application); and,
- Proposed Site 1E (162 acres)—Oneida Industrial Park located at the intersection of East Adam Drive and Short Road (listed as Parcel B in the application).

Proposed Site 2 (1,617 acres, 3 parcels) in Winnebago County:

- Proposed Site 2A (289 acres)—Oshkosh Southwest Development Park located west of Oakwood Road, north of Route 91, west of Clairville Road and south of 20th Avenue in the City of Oshkosh and Town of Algoma (listed as Parcel C in the application);
- Proposed Site 2B (10 acres)—the SJ Spanbaurer (Fox Valley Technical College) facility bounded by West 20th Avenue to the north, Oregon Street to the east, West 23rd Avenue to the south and Minnesota Street to the west, adjacent to Site 2C (below), in the City of Oshkosh (listed as Parcel D in the application); and,
- Proposed Site 2C (1,318 acres)—Wittman Regional Airport located in the City of Oshkosh and the Townships of Algoma and Nekimi (listed as Parcel E in the application).

The property is owned by the Seven Generations Corporation, Oneida Tribe of Wisconsin, City of Oshkosh, Fox Valley Technical College, and the County of Winnebago. No specific manufacturing is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

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

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

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

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

The closing period for their receipt is January 18, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Brown County Library, 515 Pine Street, Green Bay, WI 54301.

Dated: November 12, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–25729 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Gerald Morey

In the Matter of: Gerald Morely, Currently Incarcerated at: Inmate Number: 29600–177, Seagoville FCI, 2113 North Highway 175, Seagoville, Texas 75159; and With an Address at: 9715 Vinewood Drive, Dallas, Texas 75,228, Respondent; Order Denying Export Privileges

On August 11, 2003, in the U.S. District Court in the Southern District of Florida, Gerald Morey (''Morey'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) (''AECA''). Specifically, Morey was found to have knowingly and willfully exported, caused to be exported, and attempted to export from the United States to Columbia via Haiti, MAK–90 rifles without first obtaining the required authorization from the U.S. Department of State, office of Defense Trade Controls.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (''Act'') [1] and § 766.25 of the Export Administration Regulations [2] (''Regulations'') provides, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any persons who has been convicted of a violation of * * * section 38 of the Arms Export Control Act,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, § 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

Having received notice of Morey's conviction for violating the AECA, and after providing notice to and an opportunity for Morey to make a written submission to the Bureau of Industry and Security as provided in § 766.25 of the Regulations, and having received no submission from Morey, I, following consultations with the Export Enforcement, including the Acting Director, Office of Export Enforcement, have decided to deny Morey's export privileges under the Regulations for a period of five years from the date of his conviction. The five-year period ends on August 11, 2008. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Morey had an interest at the time of his conviction.

Accordingly, *it is hereby ordered*

I. Until August 11, 2008, Gerald Morey, currently incarcerated: Inmate Number: 29600–177, Seagoville FIC, 2113 North Highway 175, Seagoville, Texas 75159, and with an address at: 9715 Vinewood Drive, Dallas, Texas 75228, and, when acting in behalf of Morey, all of his assigns or successors, and when acting for or on behalf of Morey, his representatives, agents or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States.

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in § 766.23 of the

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 1294, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004, (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

[2] The Regulations are currently codified at 15 CFR Parts 730–774 (2004).

Regulations, any other person, firm, corporation, or business organization related to Gerald Morey by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 11, 2008.

VI. In accordance with Part 756 of the Regulations, Morey may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Morey. This Order shall be published in the **Federal Register**.

Dated: November 12, 2004.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 04–25696 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on December 7, 2004, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on regulations.
4. Discussion on interim rule on expansion of missile-related end-use/user controls.
5. Discussion on proposed rule on ''knowledge'', ''red flags'', and safe harbor''.
6. Update on computer and microprocessor technology controls.
7. Update on encryption controls.
8. Update on country group revision project.
9. Update on Excluded Parties Listing Systems (EPLS).
10. Update on Automated Export System (AES).
11. Reports from working groups.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

For more information contact Ms. Carpenter on (202) 482–2583.

Dated: November 16, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–25730 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Opening Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on December 8, 2004, 9:30 a.m., at the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks and introductions.
2. Review of Wassenaar Arrangement and Technical Working Group issues.
3. Review of Missile Technology Control Regime issues.
4. Update on regulations and procedures.
5. Update on status of U.S. Munitions List.
6. Update on country-specific policies.
7. Presentation of papers, proposals and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials to Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: November 16, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–25731 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 19, 2004.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

Initiation of Reviews:

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue

the final results of these reviews not later than October 31, 2005.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, A–351–832	10/1/03–9/30/04
Companhia Siderurgica Belgo Mineira	
Belgo Mineira Participacao Industria e Comercio S.A.	
BMP Siderurgia S.A.	
Canada: Carbon and Certain Alloy Steel Wire Rod, A–122–840	10/1/03–9/30/04
Ivaco Inc., Ivaco Rolling Mills L.P.	
Ispat-Sidbec, Inc.	
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/03–9/30/04
P.T Ispat Indo	
Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/03–9/30/04
Hylsa Puebla, S.A. de C.V.	
The People's Republic of China: Helical Spring Lock Washers,[1] A–570–822	10/1/03–9/30/04
Hang Zhou Spring Washer Co., Ltd./(aka Zhejiang Wanxin Group Co., Ltd.)	
The People's Republic of China: Polyvinyl Alcohol,[2] A–570–879	3/20/03–9/30/04
Sinopec Sichuan Vinylon Works	
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/03–9/30/04
Caribbean Ispat Limited	
Countervailing Duty Proceedings	
Canada: Certain Hard Red Spring Wheat, C–122–848	3/10/03–12/31/03
Canadian Wheat Board	
Iran: Certain In-Shell Roasted Pistachios, C–507–601	1/1/03–12/31/03
Tehran Negah Nima Trading Company, Inc./dba Nima Trading Company	
Suspension Agreements	
Russia: Uranium, A–821–802	10/1/03–9/30/04

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of polyvinyl alcohol from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States, 291 F.3d 806* (Fed. Cir. 202), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 12, 2004.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. E4–3262 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Notice of Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of partial rescission of antidumping duty administrative review.

EFFECTIVE DATE: November 19, 2004.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Steve Ryan, AD/CVD Operations, Office 4, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831 or (202) 482–0065, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department of Commerce (Department) published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 2003, through June 30, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 69 FR 39903 (July 1, 2004).

In accordance with 19 CFR 351.213(b)(1), on July 30, 2004, the petitioner (*i.e.*, Globe Metallurgical Inc.) requested a review of this order with respect to the following producers/exporters: Ligas de Aluminio S.A. (LIASA), Companhia Ferroligas de Minas Gerais S.A. (Minasligas) and Camargo Correa Metais S.A. (CCM).

The Department initiated an administrative review for LIASA, Minasligas and CCM in August 2004 and September 2004. *See Initiation of*

Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 52857 (August 30, 2004); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 69 FR 56745 (September 22, 2004). The Department issued questionnaires to these companies in September 2004.

In response to our questionnaires, LIASA and Minasligas notified the Department that they had no sales or exports of subject merchandise during the period of review (POR). *See* Letters from LIASA and Minasligas, regarding the ''Thirteenth Administrative Review of Silicon Metal from Brazil'' (September 24, 2004). The Department confirmed these companies' statements with U.S. Customs and Border Protection (CBP). Accordingly, we notified the petitioner that we intended to rescind this administrative review with respect to LIASA and Minasligas. *See* Memorandum from Maisha Cryor, Analyst, to the file, ''Partial Rescission of the Antidumping Duty Administrative Review of Silicon Metal from Brazil for the Period of Review July 1, 2003, through June 30, 2004,'' dated October 14, 2004. The petitioner did not object. *See* Memorandum from Steve Ryan, Analyst, to the file, ''Silicon Metal from Brazil: Petitioner's Phone Call and Submission of Comments on Partial Rescission,'' dated October 25, 2004.

Rescission of Review

Because LIASA and Minasligas had no sales or exports of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review of the antidumping duty order on silicon metal from Brazil for the period of July 1, 2003, through June 30, 2004, with respect to LIASA and Minasligas. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 5, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3263 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 85–11A018.

SUMMARY: The U.S. Department of Commerce has issued an amended Export Trade Certificate of Review to the U.S. Shippers Association (''USSA'') on November 5, 2004. The original Export Trade Certificate of Review No. 85–00018 was issued to USSA on June 3, 1986, and announced in the **Federal Register** on June 9, 1986, (51 FR 20873). The previous amendment (No. 85–10A018) was issued to USSA on October 27, 2004, and announced in the **Federal Register** November 9, 2004, (69 FR 64906).

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–4021) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2004).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

USSA's Export Trade Certificate of Review has been amended to add AMCOL International Corporation, Arlington Heights, Illinois, as a new ''Member'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l) (2004)).

The effective date of the amended certificate is June 30, 2004. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 15, 2004.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E4–3254 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Completion of Panel Review

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

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Alloy Magnesium From Canada , Secretariat File No. USA–CDA–00–1904–06.

SUMMARY: Pursuant to the Order of the Extraordinary Challenge Committee issued October 7, 2004, affirming the final remand determination described above was completed on October 8, 2004.

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

SUPPLEMENTARY INFORMATION: On October 7, 2004, the Extraordinary Challenge Committee issued an order which affirmed the final remand opinion of the Binational Panel concerning Alloy Magnesium from Canada. Based on the decision of the Extraordinary Challenge Committee, the Binational Panel members are discharged from their duties effective October 8, 2004.

November 15, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E4–3264 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *http://www.nfpa.org.*

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals that have been received, and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Document—edition	Document title	Proposal closing date
NFPA 13—2002	Standard for the Installation of Sprinkler Systems	11/5/2004
NFPA 13D—2002	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	11/5/2004
NFPA 13R—2002	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	11/5/2004
NFPA 15—2001	Standard for Water Spray Fixed Systems for Fire Protection	11/29/2004
NFPA 20—2003	Standard for the Installation of Stationary Pumps for Fire Protection	12/31/2004
NFPA 24—2002	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	11/5/2004
NFPA 25—2002	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.	5/27/2005
NFPA 30—2003	Flammable and Combustible Liquids Code	11/29/2004
NFPA 30A—2003	Code for Motor Fuel Dispensing Facilities and Repair Garages	11/29/2004
NFPA 30B—2002	Code for the Manufacture and Storage of Aerosol Products	11/29/2004
NFPA 32—2004	Standard for Drycleaning Plants	11/29/2004
NFPA 33—2003	Standard for Spray Application Using Flammable or Combustible Materials	11/29/2004
NFPA 34—2003	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids	11/29/2004
NFPA 40—2001	Standard for the Storage and Handling of Cellulose Nitrate Film	11/29/2004
NFPA 58—2004	Liquefied Petroleum Gas Code	5/27/2005
NFPA 59—2004	Utility LP–Gas Plant Code	5/27/2005
NFPA 68—2002	Guide for Venting of Deflagrations	5/27/2005
NFPA 72—2002	National Fire Alarm Code®	11/5/2004
NFPA 77—2000	Recommended Practice on Static Electricity	11/29/2004
NFPA 80A—2001	Recommended Practice for Protection of Buildings from Exterior Fire Exposures	11/29/2004
NFPA 85—2004	Boiler and Combustion Systems Hazards Code	5/27/2005
NFPA 86—2003	Standard for Ovens and Furnaces	11/29/2004
NFPA 88A—2002	Standard for Parking Structures	11/29/2004
NFPA 101A—2004	Guide on Alternative Approaches to Life Safety	11/29/2004
NFPA 101B—2002	Code for Means of Egress for Buildings and Structures	11/29/2004
NFPA 130—2003	Standard for Fixed Guideway Transit and Passenger Rail Systems	11/29/2004
NFPA 150—2000	Standard on Fire Safety in Racetrack Stables	11/29/2004
NFPA 258—2001	Recommended Practice for Determining Smoke Generation of Solid Materials	11/29/2004
NFPA 262—2002	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces.	11/29/2004
NFPA 265—2002	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Coverings on Full Height Panels and Walls.	11/29/2004
NFPA 268—2001	Standard Test Method for Determining Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source.	11/29/2004
NFPA 287—2001	Standard Test Methods for Measurement of Flammability of Materials in Cleanrooms Using a Fire Propagation Apparatus (FPA).	11/29/2004
NFPA 288—2001	Standard Method of Fire Tests of Floor Fire Door Assemblies Installed Horizontally in Fire Resistance Rated Floor Systems.	11/29/2004
NFPA 291—2002	Recommended Practice for Fire Flow Testing and Marking of Hydrants	11/5/2004
NFPA 301—2001	Code for Safety to Life from Fire on Merchant Vessels	11/29/2004
NFPA 407—2001	Standard for Aircraft Fuel Servicing	11/29/2004

Document—edition	Document title	Proposal closing date
NFPA 490—2002	Code for the Storage of Ammonium Nitrate	11/29/2004
NFPA 556—*P	Guide on Methods for Evaluating Fire Hazard and Fire Risk of Vehicular Furnishing	11/29/2004
NFPA 655—2001	Standard for Prevention of Sulfur Fires and Explosions	11/29/2004
NFPA 664—2002	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities.	11/29/2004
NFPA 704—2001	Standard System for the Identification of the Hazards of Materials for Emergency Response	11/29/2004
NFPA 853—2003	Standard for the Installation of Stationary Fuel Cell Power Plants	11/29/2004
NFPA 1081—2001	Standard for Industrial Fire Brigade Member Professional Qualifications	11/29/2004
NFPA 1125—2001	Code for the Manufacture of Model Rocket and High Power Rocket Motors	11/29/2004
NFPA 1500—2002	Standard on Fire Department Occupational Safety and Health Program	11/29/2004
NFPA 1582—2003	Standard on Comprehensive Occupational Medical Program for Fire Departments	11/29/2004
NFPA 1583—2000	Standard on Health-Related Fitness Programs for Fire Fighters	11/29/2004
NFPA 1600—2004	Standard on Disaster/Emergency Management and Business Continuity Programs	5/27/2005
NFPA 1901—2003	Standard for Automotive Fire Apparatus	3/31/2006
NFPA 1911—2002	Standard for Service Tests of Fire Pump Systems on Fire Apparatus	4/1/2005
NFPA 1914—2002	Standard for Testing Fire Department Aerial Devices	4/1/2005
NFPA 1915—2000	Standard for Fire Apparatus Preventative Maintenance Program	4/1/2005
NFPA 2001—2004	Standard on Clean Agent Fire Extinguishing Systems	5/27/2005
NFPA 2112—2001	Standard on Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire.	11/29/2004
NFPA 2113—2001	Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire.	11/29/2004

*P Proposed NEW drafts are available from NFPA's Web site—*http://www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269.

Dated: November 15, 2004.

Hratch Semerjian,

Acting Director.

[FR Doc. 04–25734 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its January and July meetings the NFPA Standards Council acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2005 November Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Twenty-seven reports are published in the 2005 November Cycle Report on Proposals and will be available on January 7, 2005. Comments received on or before March 25, 2005, will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2005 November Cycle Report on Proposals is available and downloadable from NFPA's Web site—*http://www.nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees to the Standards Council for issuance in January and July of each year. Documents that receive an Intent to Make a Motion are automatically held for action at the NFPA's meeting in June of each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before March 25, 2005, for the 2005 November Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2005 November Cycle Report on Comments by September 16, 2005.

A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive an Intent to Make a Motion will automatically be forwarded to the Standards Council for action at its January 27, 2006, meeting. Action on the reports of the Technical Committees on documents that do receive an Intent to Make a Motion will be taken at the

June 4–9, 2006, meeting in Orlando, Florida by NFPA members.

2005 NOVEMBER MEETING—REPORT ON PROPOSALS

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

NFPA 10	Standard for Portable Fire Extinguishers	C
NFPA 14	Standard for the Installation of Standpipe and Hose Systems	C
NFPA 31	Standard for the Installation of Oil-Burning Equipment	P
NFPA 37	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines	P
NFPA 51A	Standard for Acetylene Cylinder Charging Plants	C
NFPA 70B	Recommended Practice for Electrical Equipment Maintenance	P
NFPA 79	Electrical Standard for Industrial Machinery	P
NFPA 97	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances	W
NFPA 102	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	C
NFPA 211	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	P
NFPA 289	Standard Method of Fire Test for Room Fire Growth Contribution of Individual Fuel Packages	N
NFPA 418	Standard for Heliports	C
NFPA 750	Standard on Water Mist Fire Protection Systems	P
NFPA 804	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants	C
NFPA 805	Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants	C
NFPA 901	Standard Classifications for Incident Reporting and Fire Protection Data	C
NFPA 914	Code for Fire Protection of Historic Structures	C
NFPA 1401	Recommended Practice for Fire Service Training Reports and Records	C
NFPA 1404	Standard for Fire Service Respiratory Protection Training	C
NFPA 1405	Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires	C
NFPA 1851	Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles	C
NFPA 1906	Standard for Wildland Fire Apparatus	C
NFPA 1912	Standard for Fire Apparatus Refurbishing	C
NFPA 1971	Standard on Protective Ensemble For Structural Fire Fighting	C
NFPA 1976	Standard on Protective Ensemble for Proximity Fire Fighting	W
NFPA 1983	Standard on Fire Service Life Safety Rope and System Components	C
NFPA 1994	Standard on Protective Ensembles for Chemical/Biological Terrorism Incidents	P

Dated: November 10, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–25732 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081004A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Taking of Harbor Seals Incidental to Wall Replacement and Bluff Improvement Projects at La Jolla, San Diego County, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to wall replacement and bluff improvement projects at La Jolla, California, has been issued to the City of San Diego.

DATES: Effective from September 20, 2004, through January 1, 2005.

ADDRESSES: The application, a list of references used in this document, and the IHA are available by writing to Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, NMFS, (301) 713–2322 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 27, 2004, NMFS received an application from the City of San Diego requesting an IHA for the possible

harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) incidental to cove wall replacement and bluff improvement projects at La Jolla, CA. The purpose of this bluff improvement project is to protect public access along the coast and to maintain public rights-of-way that have been adversely affected by coastal erosion, in a safe and publicly accessible condition. Bluff improvement measures address ongoing marine and subaerial erosion in six study sites, along with the removal of an aging wall above La Jolla Cove. Improvement measures are limited to remediation of only the upper portion of the bluff, allowing natural marine processes to continue unabated. Mitigation of marine erosion associated with splash and spray on the upper sloping portion of the coastal bluff will be limited to re-vegetation, primarily hydroseeding, and some limited container plants, along with a combination of both setting back and deepening the seaward edge of reconstructed sidewalks to provide some structural stiffness and increased stability, as both marine and sub-aerial processes continue to encroach upon bluff-top improvements. Key objectives of the site improvements are to protect lateral public access along the coast, increase public safety, minimize disturbance of the marine environment and its inhabitants, minimize disruption of public recreation and scenic vista opportunities, avoid disruption of public access to coastal areas, minimize visual impacts by re-vegetating manufactured slopes with native vegetation, avoid changes in runoff patterns, maintain pedestrian and vehicular travel around the construction sites, and avoid the use of rip rap. This activity does not include improvements to Children's Pool itself.

Measurement of Airborne Sound Levels

The following section is provided to facilitate an understanding of airborne and impulsive noise characteristics. Amplitude is a measure of the pressure of a sound wave that is usually expressed on a logarithmic scale with units of sound level or intensity called the decibel (dB). Sound pressure level (SPL) is described in units of dB re micro-Pascal (micro-Pa, or µPa); for energy, the sound exposure level (SEL), a measure of the cumulative energy in a noise event, is described in terms of dB re micro-Pa^2 -second; and frequency, often referred to as pitch, is described in units of cycles per second or Hertz (Hz). In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound.

For airborne noise measurements the convention is to use 20 micro-Pa as the reference pressure, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa and is the approximate threshold of human hearing. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html*.

Airborne sounds are also often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. When frequency levels are made to correspond to human hearing, they are referred to as being A-weighted or A-filtered. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting is often used in the analysis of high-amplitude noises like explosions, and corresponds to the relative response to the human ear to sound levels above 85 dB. C-weighting de-emphasizes ear frequency components of less than about 50 Hz. C-weight scaling is also useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms. For continuous noise like rocket launches, the important variables relevant to assessing auditory impacts or behavioral responses are intensity, frequency spectrum, and duration. In this document, whenever possible sound levels have been provided with A-weighting.

Project Description

The Children's Pool area at La Jolla, including Children's Pool Beach and Seal Rock, is a year-round haulout and rookery for harbor seals. Four of the six construction sites are close to where harbor seals may be hauled out, and therefore may result in the incidental harassment of harbor seals. All construction activities will begin no earlier than the effective date of this IHA and will end no later than January 1, 2005. Construction can occur on any site on weekdays between the hours of 8:30 am and 3:30 pm except on national holidays. Demolition and construction may take place simultaneously at all four sites. The duration of construction at any one of these four sites will be limited to six working days total. Demolition of each site is scheduled to last one day. Equipment required for demolition will include hand tools, backhoes, power saws, and pavement breakers and/or jackhammers. No explosives will be used during demolition. The City of San Diego estimates that the maximum received sound exposure level 100 ft (30.5 m) from demolition activities is approximately 90 dBA (re 20 micro-Pa^2 -sec). The equipment involved in these activities will include a concrete mixer, power auger, and hand tools. The maximum received sound exposure level at 100 ft (30.5 m) from construction activities is estimated to be about 81 dBA (re 20 micro-Pa^2 -sec). The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. Summaries of the proposed improvements at each of the 4 sites that have a potential to harass harbor seals follows.

Site 55D

This site is located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. At this site, the existing post-and-board wall located on the slope will be removed. The area eroded by the abandoned storm drain will be filled with a reinforced geometric grid at a 1.5:1 slope. The proposed fill of approximately 20 cubic yds (15.3 cubic m) will extend approximately 14 ft (4.3 m) seaward of the existing corrugated metal pipe outlet, and the toe of the fill will terminate approximately 5 ft (1.5 m) from the edge of the sea cliff. The manufactured slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 55F

This site is also located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk will be constructed a minimum of 8 ft (2.4 m) from the top of the existing slope. The new sidewalk will have a deepened structural edge 5 ft (1.5 m) in thickness to provide the structural capacity to span the rubble-filled sea cave below. To minimize runoff, the curb will be installed and the sidewalk will be cross-sloped 1.5 percent toward the street and away from the bluff top. The existing wood posts and metal rails will be removed and new wood posts and metal rails will be located at the outer edge of the relocated sidewalk. The face of the existing vertical slope will be trimmed back somewhat to improve surficial stability and assist in the establishment of a vegetative cover. The exposed slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 57E

This site is located on the 800 block of Coast Boulevard, southwest of Jenner Street, adjacent to Seal Rock. The existing 5 ft-wide (1.5 m) sidewalk will be removed and a new 5 ft-wide (1.5 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 58A

Site 58A is located on the 900 block of Coast Boulevard, southwest of Ocean Street. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Comments and Responses

A notice of receipt of the City of San Diego's application for wall replacement and bluff improvement projects at La Jolla, San Diego, CA, and proposed IHA was published in the **Federal Register** on August 20, 2004 (69 FR 51632). That notice described in detail the proposed activity and the marine mammal species that may be affected by it. Additional information on harbor seals found in Central California waters can be found in Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*. During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission) and one member of the public. The Commission concurs with NMFS' determinations concerning the impacts of the proposed activities on harbor seals and recommends that the authorization be granted.

Comment 1: This project shouldn't happen because the seals would desert the area for a long period of time, making them homeless. There is much opposition to having seals in the La Jolla area, and this project is a ploy to hurt the seals so that they leave. This would be unfair to the people coming to see them. The comment period should be extended by another 90 days.

*Response:*The intent of this project is not to evict the seals from the area. The bluff-improvements are necessary to increase public safety along the coast and to maintain and protect public access and rights-of-way that have been adversely affected by coastal erosion. Planned improvements will result in increased stability of the seaward edge of sidewalks, resulting in increased safety to pedestrians, including those coming to see the seals. This activity does not include improvements to Children's Pool itself.

The project will not occur over a long period of time. The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. The duration of construction at any one of the four construction sites close to where harbor seals may be hauled out will be limited to six working days total. Demolition of each site is scheduled to last one day. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996). With the implementation of mitigation measures (see Mitigation), disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Short-term impacts are expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock.

Section 101(a)(5)(D) of the MMPA specifies a public comment period of 30 days for proposed IHA's.

Comment 2: Seals might be killed or hurt by this project. The take is not incidental when a population is decimated. The take is substantial and the wording of the proposed authorization is misleading to the public. With California's population in the high millions, there is no reason why 27,000 seals cannot be tolerated.

Response: Pacific harbor seals are widely distributed in the North Pacific Ocean. The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assessment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals. However, 27,000 seals will not be affected by this project. Recent population counts show that the harbor seal population in La Jolla is stable at approximately 150–200 seals. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and 172 (H-SWRI, 1995–1997). Therefore, the maximum number that could potentially be impacted would be no more than 172.

As described in the previous response, potential impacts from the project are expected to be minimal to none. Level B harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to rocket launch sounds with sound exposure levels of 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. The maximum received levels 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. 57E is the closest of the four construction sites to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependent on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels and there should be little to no impact on the seals. Special attention will be given to this site during construction and monitoring (see Monitoring).

Comment 3: The estimates of seal numbers in the area are often political in nature, designed to give a number that coincides with a desired political action.

Response: NMFS uses all data and information resources available when making determinations. There are groups other than NMFS that collect information on the harbor seals that haulout at or near Children's Pool and Seal Rock. These include Hubbs-Sea World Research Institute and Friends of La Jolla Seals. Additional information

on harbor seals found in Central California waters can be found in NMFS' Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

Mitigation

Several mitigation measures to reduce the potential for harassment from wall replacement and bluff improvement construction activities will be implemented under the IHA. The primary mitigation measure is the restriction on the days and times when construction can take place. Demolition will be limited to one day at each of the four sites, ensuring that the highest noise levels will only occur for a short period of time. In addition, construction activities will not take place prior to 8:30 am and will not go beyond 3:30 pm. Harbor seals in this area are known to use haulout areas in greatest numbers in the afternoon. Since construction activities will be finished by 3:30 pm every day, this minimizes the number of harbor seals potentially disturbed. Disturbance to harbor seals has a more serious effect when seals are pupping or nursing, when aggregations are dense, and during the molting period. To ensure that construction activities are not overlapping with the pupping season, the contractor will coordinate with ''Friends of La Jolla Seals'' or Hubbs-SeaWorld Research Institute (HSWRI). Either of these organizations will confirm when the pupping season has come to an end, usually sometime in late June or early July, after the last pup has been weaned. Once this is confirmed, construction activities may begin with the approval of NMFS. The pupping season for harbor seals begins in early February; however pregnant females are hauled out at Children's Pool in the weeks leading up to the pupping season. Accordingly, all construction activity will be completed by the 1st of January, 2005. These mitigation measures will reduce the potential for Level B incidental harassment takes and eliminate the potential for injury or mortality of Pacific harbor seals.

As mentioned, demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. This ensures that demolition will result in a minimal amount of debris on Seal Rock or the nearby beach.

Monitoring

Harbor seal haulouts will be monitored periodically during construction activities. Monitoring will be conducted by a qualified biologist approved by NMFS. During all monitoring periods, the following information will be recorded: date, time, tidal height, maximum number of harbor seals hauled out, number of adults and sub-adults, number of females and males (if possible), and any observed disturbances to the seals. During periods of construction, a description of construction activities will also be recorded. Observations of unusual behaviors, numbers, or distributions of pinnipeds, including any rare or unusual species of marine mammals, will be reported to NMFS' Southwest Science Center allowing transmittal of this information to appropriate agencies and personnel for any potential follow-up observations.

Prior to construction at each of the four sites, three full days of baseline monitoring will occur to assess harbor seal use of the haulouts before construction begins. Wall replacement and bluff stabilization activities will begin with one day of demolition at each site. Monitoring at each site during demolition will start one hour before demolition begins, run all day, and will be completed no sooner than one hour after it ends.

Results from the pre-construction baseline monitoring will determine if mid-day monitoring is necessary for sites 55D, 55F, and 58A during the days of construction following demolition. If it is determined that it is necessary and/or beneficial, monitoring will take place at each site during every day of construction starting one hour before construction begins each day and finishing one hour after it ends each day. If it is determined that mid-day monitoring is not necessary, two 2–hour monitoring sessions will occur each day of construction following demolition. The first session will begin one hour before the start of construction and end one hour after the start of construction, and then begin again one hour before the end of construction and end one hour after construction has finished for the day.

Site 57E is the closest work site to Seal Rock, which is located about 170 feet (51.8 m) away from the site. At this distance, much of the construction noise will have attenuated to low levels. However, NMFS believes careful monitoring of this site is warranted. Despite results from baseline monitoring, monitoring will take place at site 57E during every day of construction starting one hour before construction begins each day and finishing no earlier than one hour after construction ends each day.

Sound levels 100 feet (30.5 m) from each site will be recorded during all periods of monitoring. If at any time indications of a substantial disturbance to harbor seals resulting from construction activities are observed, or if sound levels are found to be above 90 dBA at a distance of 100 feet (30.5 m) from construction at any of the sites, the applicant will contact NMFS to provide this information. It will then be determined if any further mitigation or monitoring measures are needed, such as the installation of sound barriers. However, at this time NMFS is not requiring sound barriers because sound levels appear to be too low at most, if not all, sites to even cause Level B behavioral harassment.

Reporting

A draft report will be submitted to NMFS Regional Administrator, Southwest Region, within 90 days after project completion. The final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

The City of San Diego is planning on sharing and comparing data collected as a result of these monitoring efforts with other interested parties, such as the HSWRI or Friends of La Jolla Seals. Monitoring work during this project may be conducted in collaboration with these groups as well.

Estimates of Take by Harassment

The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assesment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals. Peak numbers of harbor seal counts for the La Jolla area in general were 166 in June, 1996 and 172 in July, 1997 (H-SWRI, 1995–1997). These numbers were recorded at the peak of the breeding season, the typical time of maximum haulout. As stated earlier, the population in La Jolla is stable at approximately 150–200 seals. Population trends from 1999 revealed that the largest counts of seals hauled out on the beach occurred during the period between January and May, with a peak in counts in June at Seal Rock. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and

172 (H-SWRI, 1995–1997). Therefore, the maximum number that could be impacted would be 172. There is no anticipated impact from construction activities on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Marine Mammal Impacts

Level B Harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. The permanent abandonment of the Children's Pool area is also not anticipated because harbor seals have habituated to traffic noise. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996).

Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with sound exposure levels of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals, and 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. Therefore, it is expected that most received noise levels at the harbor seal haulouts will be below levels that are likely to cause disturbance. However, to date that remains unknown. As stated earlier, the maximum received levels at 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. Sites 55D and 55F are closest to Children's Pool Beach. These sites are approximately 250 ft (76.2 m) from the beach haulout area used by the harbor seals. At that distance there should be little to no impact on the seals. Sites 57E and 58A are closer to Seal Rock. 58A is almost 400 ft (122 m) from Seal Rock, and is not expected to cause any harassment of the seals hauled out on Seal Rock. 57E is the closest of the four to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependant on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels. However, special attention will be given to this site during construction and monitoring (see MONITORING).

Demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. The expected debris would be soil or small pieces of concrete that could be removed by hand or shovel. Noise levels for installing the fence and removing debris trapped in it will be low and unlikely to harass harbor seals. The distance of the sites to Seal Rock or the beach where the seals haul out will not allow debris to fall onto these areas.

Incidental harassment resulting from bluff stabilization construction may occur in all age classes and sexes of harbor seals present in the Children's Pool area. The number of harbor seals at Children's Pool Beach and Seal Rock varies throughout the year. For the population of seals occupying Children's Pool, the numbers of seals that haul out vary with season, tide, and time of day (Hubbs-SeaWorld Research Institute 1995–1997). More haulout area is available to be occupied during low tide. However, sometimes those animals that are on land will move higher up the beach to avoid the approaching tide and thus do not necessarily leave the haulout area. For the La Jolla area in general, a greater number of animals were seen hauled out in late afternoon or evening, regardless of the tide. In general, there is a decrease in counts in late summer through winter in La Jolla. The largest numbers of seals are seen during the molting/breeding season. Also, the number of seals hauled-out generally decreased during the first few calm days after a storm.

Although the seals in the area have become accustomed to the presence of tourists viewing the haulout site, the addition of construction workers, construction equipment (in particular the sudden noise of a jackhammer or power saw), and other project related activities could result in a temporary startle response when harbor seals may flush into the water. However, the likelihood of this occurring is very low, and with the implementation of mitigation measures, disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Demolition and construction work is not expected to result in injury or mortality because the required work restrictions and mitigation measures will minimize construction-related disturbance. At a maximum, the action is expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock.

Endangered Species Act (ESA)

NMFS has determined that the cove wall replacement and bluff improvement projects and the accompanying IHA will not have an effect on species listed under the ESA. Therefore, consultation under Section 7 was not required.

National Environmental Policy Act (NEPA)

On September 15, 2003, the City of San Diego completed an Environmental Impact Report (EIR) for the La Jolla Cove Wall Replacement and Bluff Improvements Project. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NOAA Fisheries has reviewed the information contained in the EIR and determined that it accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Based on this review and analysis, NOAA Fisheries has adopted the City of San Deigo's EIR as its own document and made a Finding of No Significant Impact on September 2, 2004. As a result, NOAA Fisheries has determined that it is not necessary to issue a new Environmental Assessment (EA), a supplemental EA or an Environmental Impact Statement for the issuance of an IHA to the City of San Diego for this activity.

Determinations

Based on the information contained in the application, the City of San Deigo's EIR, the August 20, 2004 (69 FR 51632)**Federal Register** notice and this document, NOAA Fisheries has determined that the cove wall

replacement and bluff improvement project at La Jolla, CA, will result, at most, in a temporary modification in behavior by Pacific harbor seals by head alerts and/or flushing from the beach. While behavioral modifications may be made by these species as a result of demolition and construction activities, this behavioral change is expected to result in no more than a negligible impact on the affected species. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity and the distance between the seals and the construction site, the number of potential harassment takings will be small, and no take by injury and/or death is anticipated. The project is not expected to interfere with any subsistence hunts. NMFS has therefore determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to the City of San Diego to take small numbers of Pacific harbor seals incidental to wall replacement and bluff improvement projects, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 15, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–25741 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 15, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection Web site (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 638/639 is being increased for the partial undoing of special shift, decreasing the limit for Categories 338/339 to account for the quantity being returned to 638/639.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59923, published on October 20, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on November 22, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
338/339	3,691,064 dozen.
638/639	2,954,972 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3261 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method and Apparatus for Making Body Heating and Cooling Garments

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. patent No. US 6,813,783 B2 entitled ''Method and Apparatus for Making Body Heating and Cooling Garments'' issued November 9, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25680 Filed 11–18–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Athens Navigation Project, Village of Athens, Greene County, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, is preparing a Draft Environmental Impact Statement (DEIS) to ascertain compliance with and to lead to the production of a National Environmental Policy Act (NEPA) document in accordance with the President's Council of Environmental Quality (CEQ) Rules and Regulations, as defined and

amended in 40 Code of Federal Regulations (CFR), parts 1500–1508, Corps principals and guidelines as defined in Engineering Regulation (ER) 1105–2–100, Planning Guidance Notebook, ER200–2–2, Procedures for Implementing NEPA, and other applicable Federal and State environmental laws for the proposed Athens Navigation Project, Village of Athens, Greene County, NY.

ADDRESSES: U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, Room 2146, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Bonnie Hulkower, Project Biologist, Planning Division—Environmental Branch, at (212) 264–5798 or *bonnie.hulkower@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This project is a modification to the Hudson River to Waterford project, authorized and directed by Section 110 of the Energy and Water Development Appropriations Act of 1997 (Pub. L. 104–206).

1. A Public Scoping Meeting was held in May 2002 and the results were collected in the Public Scoping Document. These results are available for review. All results from public and agency scoping coordination will be addressed in the DEIS. Parties interested in receiving the Scoping Document should contact Bonnie Hulkower (*see* **ADDRESSES**).

2. A DEIS is scheduled for completion by January 2005.

3. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to COL Richard J. Polo, Jr., District Engineer, (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25681 Filed 11–18–04; 8:45 am]

BILLING CODE 3710–06–M

ELECTION ASSISTANCE COMMISSION

Information Collection Activity; Proposed Collection; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received on or before close of business (5:30 p.m. e.s.t.) on Monday, December 6, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the U.S. Election Assistance Commission, 1225 New York Avenue NW., Washington, DC 20005, ATTN: Mr. Brian Hancock or may be submitted by facsimile transmission at (202) 566–3127.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Brian Hancock at (202) 566–3100.

Title and OMB Number: Military and Overseas Absentee Ballot Survey, OMB Number 6820–0NEW.

Needs and Uses: The information collection requirement is necessary to meet a requirement of the *Help America Vote Act (HAVA) of 2002* (42 U.S.C. 15301 *et seq.*). Section 703 of HAVA requires the states and local election jurisdictions to ''submit a report to the Election Assistance Commission * * * on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election * * *'' *HAVA* further directs EAC to develop a form for the report of these statistics.

Affected Public: State or Local Government.

Annual Burden Hours: 5060 hours.

Number of Respondents: 55.

Responses Per Respondent: 1.

Average Burden Per Reslponse: 92 hours.

Frequency: Following each federal general election (Bi-annually).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

HAVA created the Election Assistance Commission and enacted numerous provisions aimed at improving the administration of federal elections. This survey seeks information regarding the ballots requested and cast by military personnel and overseas citizens in the November 2, 2004 election. In addition, this information will assist EAC in studying the administration of that federal election, will provide insight into issues or problems that may require additional study and consideration, and will assist the EAC in providing a complete report to Congress on the successes and challenges related to the November 2, 2004 election. The following categories of information are requested on a countylocal election jurisdiction and State level:

Contact Information

State, name, title, address, phone, e-mail, and date of submission.

Absentee Ballots

- Number of absentee ballots transmitted to (a) domestic military, (b) overseas military, and (c) overseas citizens;
- Number of absentee ballots returned by (a) domestic military, (b) overseas military, and (c) overseas citizens;
- Number of advance or special write in ballots sent to military and overseas citizens;
- Number of absentee ballots returned by (a) mail, (b) fax, and (c) e-mail;
- Number of absentee ballots counted;
- Number of absentee ballots rejected for each of the following reasons, respectively: (a) Lacked postmark, (b) lacked voter's signature, (c) contained no verifiable signature, (d) had no date of signature, (e) had no notary or witness signature, (f) had no date of notary or witness signature, (g) was received after the state deadline, (h) was returned as undeliverable, or (i) was rejected for another reason;
- Number of Federal Write-In Absentee Ballots (FWAB).

Jurisdictions Responding

Total number of local jurisdictions, total number of local jurisdictions reporting, reasons for missing data, and the name and contact information for each local election jurisdiction official that provided information for the purpose of responding to the survey.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–25663 Filed 11–18–04; 8:45 am]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 8, 2004, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide an update on the Witherspoon site in South Knoxville. The Witherspoon 901 site served as a scrap metal recycling facility for 45 years. The site received scrap from the Atomic Energy Commission, a DOE predecessor agency, and other organizations. Contaminated surface water and soil have been found at the site. Primary contaminants include uranium, heavy metals, organics and polychlorinated biphenyls (PCBs). The site is now a Tennessee Department of Environmental and Conservation Superfund site. DOE is overseeing the site cleanup in accordance with a Memorandum of Understanding with the State of Tennessee.

Tentative Agenda:

- Update on Witherspoon site in South Knoxville. Speaker—Jason Darby of U.S. Department of Energy (DOE).

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 Pat Halsey at the address or telephone number listed above. Requests must be received five 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. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued in Washington, DC on November 16, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–25693 Filed 11–18–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–1–000]

Nicor Gas; Notice of Petition for Rate Approval

November 15, 2004.

Take notice that on October 5, 2004, Nicor Gas tendered for filing an application pursuant to sections 284.224 and 284.123 to: (a) Establish a new facility-based priority interruptible service; and (b) revise Nicor Gas' Operating Statement to make it more user-friendly, clarify several aspects of the rules governing interstate services provided by Nicor Gas, and expand the recourse rate options available to interstate shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on December 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3257 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–343–001 and CP04–343–002]

Paiute Pipeline Company; Notice of Amendments

November 4, 2004.

Take notice that on October 25, 2004, Paiute Pipeline Company (Paiute), PO Box 94197, Las Vegas, Nevada 89193, filed in Docket No. CP04–343–001, an amendment to its initial application for a certificate of public convenience and necessity filed in Docket No. CP04–343–000. With this amendment, Paiute is proposing to acquire and operate LNG storage and associated pipeline facilities and to render LNG Storage service

consistent with a settlement filed on October 27, 2004, between Avista Corporation (Avista), Paiute, Public Service Resources Corporation (PSRC), Sierra Pacific Power Company (Sierra), Southwest Gas Corporation (Southwest), Tuscarora Gas Transmission Company (Tuscarora), and Uzal, LLC (Uzal). Paiute additionally requests authorization to render new, long-term LNG storage services under its existing Rate Schedule LGS–1. Take further notice that on October 28, 2004, Paiute filed in Docket No. CP04–343–002 an amendment to revise the proposed levels for each of the prospective storage service customers from what was proposed in Docket No. CP04–343–001, all as more fully set forth in the applications which are on file with the Commission and open to public inspection. The filings may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY (202) 502–8659.

In addition to the authorizations sought by Paiute in the subject amendments, the named parties to the settlement request Commission approval of the settlement. Paiute states the settlement resolves five pending Commission proceedings and two court cases. Among the settlements numerous other aspects Paiute requests approval for several key provisions including a determination that acquisition cost of $21,970,000 is a prudent expenditure, approval of an allocation of $12,970,000 to its storage function and $9,000,000 to its transmission function and approval of rolling into Paiute's rates the transmission costs. Paiute notes that Tuscarora and Uzal have filed to withdraw their respective applications in Docket Nos. CP04–344–000, CP04–388–000, CP04–389–000 and CP04–390–000, but indicates that such withdrawals are specifically conditioned on Commission approval of the settlement.

The second amendment, Docket No. CP04–343–002, amends the proposal in Docket No. CP04–343–001 to reflect the newly contracted service agreements as follows:

Customer	Storage capacity	Daily delivery capacity	Effective date of service
Avista	86,267 Dth	6,535 Dth	05/01/2005
Sierra	303,604 Dth	23,000 Dth	04/01/2005
Southwest—N. California	64,219 Dth	4,865 Dth	03/01/2005
Southwest—N. Nevada	495,782 Dth	37,559 Dth	03/01/2005

Any questions regarding this amendment should be directed to Edward C. McMurtrie, Paiute Pipeline Company, PO Box 94197, Las Vegas, Nevada 89193, at (702) 876–7178.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. eastern time on November 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3208 Filed 11–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–64–001]

Trunkline Gas Company, LLC; Notice of Filing

November 10, 2004.

Take notice that on November 5, 2004, Trunkline Gas Company, LLC (Trunkline Gas), PO Box 4967, Houston, Texas 77210–4967, pursuant to section 7(c) of the Natural Gas Act, as amended, and subpart A of part 157 of the Commission's Rules and Regulations, filed an application to amend its Certificate of Public Convenience and Necessity which was issued on September 17, 2004, in the above captioned docket.[1] Trunkline Gas requests that the Commission amend the certificate to increase the proposed LNG Loop Project from a 30-inch to a 36-inch diameter pipeline and certain modifications to the proposed interconnection facilities. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact

[1] Trunkline Gas Company, LLC, *et al.*, 10 FERC ¶ 61,251 (2004).

FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

On September 17, 2004, Trunkline Gas and its customer, BG LNG, entered into a Supplement and Amendment to the January 28, 2004, Agreement for Construction of Facilities. The amended agreement provides BG LNG with additional operational reliability and flexibility in Trunkline Gas Field Zone to accommodate BG LNG's presently contracted, as well as potentially expanded levels of regasified LNG volumes. Under the amended agreement, Trunkline Gas and BG LNG have agreed in principle to certain modifications to their existing arrangements. These modifications include (a) changing the proposed pipeline loop from a 30-inch to a 36-inch diameter pipeline, and (b) modifying the capacity and delivery pressure at some of the proposed delivery points. The LNG Loop Project modifications will not change the proposed construction footprint or construction procedures. Trunkline Gas does not propose to change the Amended LNG Loop Project's authorized take away capacity from the Trunkline LNG Company, LLC's terminal. The LNG import terminal is currently authorized to provide a regasified LNG sendout volume of 2.1 Bcf/d on a peak day basis, and 1.8 Bcf/d on a sustained basis.

Any questions regarding the application are to be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, Trunkline Gas Company, LLC, PO Box 4967, Houston, Texas 77210.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 1, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3253 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1528–009, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Filings

November 12, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wisconsin Public Service Corporation, Wisconsin Public Service Corporation, WPS Power Development, Inc., and WPS Energy Services, Inc., Mid-American Power, LLC, Sunbury Generation, LLC, WPS Canada Generation, Inc. and WPS New England Generation, Inc., WPS Westwood Generation, LLC, Advantage Energy Inc.

[Docket Nos. ER95–1528–0090, ER96–1088–034, ER96–1858–014, ER99–3420–003, ER99–1936–002, ER01–1114–002, ER97–2758–009]

Take notice that on November 5, 2004, WPS Resources Corporation (WPSR) on behalf of the following subsidiaries: Wisconsin Public Service Corporation; WPS Energy Services, Inc.; WPS Power Development, Inc.; Mid-American Power, LLC; Sunbury Generation, LLC; WPS Canada Generation, Inc.; WPS New England Generation, Inc.; WPS Westwood Generation, LLC, and Advantage Energy, Inc., tendered for filing tariff sheets that modify their market-based rate tariffs to add the Market Behavior Rules as adopted by the Commission. WPSR states that on September 27, 2004, it submitted a request for three-year renewal of the market-based rate authority for each of the subsidiaries. WPSR requests an effective date of December 17, 2003.

WPSR states that a copy of the filing was served on all parties listed on the Commission's official service lists in the referenced proceedings and the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on November 26, 2004.

2. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ER02–2001–000]

Take notice that on September 3, 2004, NewCorp Resources Electric Cooperative, Inc. filed a Request for Waiver of Order No. 2001 Electric Quarterly Reports Requirements.

Comment Date: 5 p.m. eastern time on December 3, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–458–004]

Take notice that on November 8, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) submitted a compliance filing pursuant to the Commission's Order issued July 8, 2004, in Docket Nos. ER04–458–000 and ER04–458–001, 108 FERC ¶ 61,027 (2004).

The Midwest ISO states that it has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region. In addition, the Midwest ISO states that the filing has been posted on the Midwest ISO Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties. The Midwest ISO further states that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on November 29, 2004.

4. Alpena Power Generation, L.L.C.

[Docket No. ER04–1004–002]

Take notice that on November 5, 2004, Alpena Power Generation, L.L.C. (Alpena Generation) tendered for filing a second supplement to its application for market-based rate authority filed on July 9, 2004, as amended on August 27, 2004, in response to the Commission's October 22, 2004, deficiency letter in Docket Nos. ER04–1004–000 and ER04–1004–001.

Alpena Generation states that copies of the filing were served on the public utility's jurisdictional customers and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on November 26, 2004.

5. Orion Power MidWest, L.P.

[Docket Nos. ER05–92–000 and ER05–92–001]

Take notice that on October 28, 2004, as amended on November 2, 2004, Orion Power MidWest, L.P. (OPMW) filed a revised tariff sheet designated as First Revised Sheet No. 1, Orion Power MidWest, L.P. FERC Electric Tariff, First Revised Volume No. 1. OPMW requests an effective date of December 1, 2004.

OPMW states that copies of the filing were served on OPMW's jurisdictional customers.

Comment Date: 5 p.m. eastern time on November 23, 2004.

6. PPL Electric Utilities Corporation

[Docket No. ER05–169–001]

Take notice that on November 5, 2004, PPL Electric Utilities Corporation (PPL Electric) submitted an amendment to its November 2, 2004, filing of revisions to PPL Electric Rate Schedule FERC No. 180, a transmission agreement between PPL Electric and Allegheny Electric Cooperating, Inc. (Allegheny).

PPL Electric states that copies of the filing were served on Allegheny.

Comment Date: 5 p.m. eastern time on November 26, 2004.

7. Allegheny Energy Supply Company, LLC

[Docket No. ER05–180–000]

Take notice that on November 4, 2004, Allegheny Energy Supply Company, LLC (AE Supply) filed a Notice of Cancellation of Hatfield's Ferry LLC, FERC Electric Tariff, Original Volume No. 1. AE Supply requests an effective date of January 1, 2005.

AE Supply states that a copy of the Notice of Cancellation has been served on all persons with currently effective service agreements under the rate schedule referenced above.

Comment Date: 5 p.m. eastern time on November 26, 2004.

8. AYP Energy, Inc.

[Docket No. ER05–181–000]

Take notice that on November 4, 2004, AYP Energy, Inc. (AYP) filed a Notice of Cancellation of AYP Energy, Inc., First Revised Rate Schedule No. 1. AYP requests an effective date of January 1, 2005.

AYP states that a copy of the Notice of Cancellation has been served on all persons with currently effective service agreements under the rate schedule referenced above.

Comment Date: 5 p.m. eastern time on November 26, 2004.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–182–000]

Take notice that on November 4, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) filed an Interconnection and Operating Agreement among the Electric Generation Business Function of Northern States Power Company d/b/a Xcel Energy, the Functionally Unbundled Transmission Function of Northern States Power Company d/ba Xcel and the Midwest ISO.

Midwest ISO states that the filing was served on the parties to the Interconnection Agreement.

Comment Date: 5 p.m. eastern time on November 26, 2004.

10. Carolina Power & Light Company

[Docket No. ER05–183–000]

Take notice that on November 4, 2004, Carolina Power & Light Company, doing business as Progress Energy Carolina, (CP&L) tendered for filing a Generator Balancing Service Schedule as Schedule 4B under the Open Access Transmission Tariffs of CP&L and Florida Power Corporation. CP&L requests an effective date of January 1, 2005.

CP&L states that copies of the filing were served on the North Carolina Utilities Commission, the South Carolina Public Service Commission and CP&L's jurisdictional customers.

Comment Date: 5 p.m. eastern time on November 26, 2004.

11. PJM Interconnection, L.L.C.

[Docket No. ER05–184–000]

Take notice that on November 4, 2004, PJM Interconnection, L.L.C. (PJM) filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to create a special membership for its real-time option Economic Load Response Program. PJM requests an effective date of November 5, 2004.

PJM states that copies of the filing were served on all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on November 26, 2004.

12. PJM Interconnection, L.L.C.

[Docket No. ER05–185–000]

Take notice that on November 4, 2004, PJM Interconnection, L.L.C. (PJM) filed proposed costs of generating units for providing black start service in the Commonwealth Edison Company zone to be recovered under Schedule 6A and of the PJM Tariff in lieu of the formula rate specified in the Tariff.

PJM states that copies of the filing were served on all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on November 26, 2004.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–186–000]

Take notice that on November 5, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) filed a Large Generator Interconnection Agreement among Butler Ridge, LLC, American Transmission Company, LLC and the Midwest ISO.

Midwest ISO states that the filing was served on the parties to the Interconnection Agreement.

Comment Date: 5 p.m. eastern time on November 26, 2004.

14. Virginia Electric and Power Company

[Docket No. ER05–187–000]

Take notice that on November 5, 2004, Virginia Electric and Power Company (Dominion) tendered for filing a new Appendix E–2 for the Service Agreement under its Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 5, for Network Integration Transmission Service between Dominion and North Carolina Electric Membership Corporation (NCEMC). Dominion states that the revised service agreement adds charges to reimburse Dominion for costs associated with the conversion of Mapleton Delivery Point for Roanoke Electric Cooperation.

Dominion states that copies of the filing were served on the NCEMC, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment Date: 5 p.m. eastern time on November 26, 2004.

15. Entergy Services, Inc.

[Docket No. ER05–188–000]

Take notice that on November 5, 2004, Entergy Louisiana, Inc. (Entergy Louisiana) tendered for filing an Interconnection Agreement between Entergy Louisiana and Perryville Energy Partners, L.L.C., designated as Original Service Agreement No. 381 under Entergy Services, Inc.'s FERC Electric Tariff, Second Revised Volume No. 3.

Comment Date: 5 p.m. eastern time on November 26, 2004.

16. Entergy Services, Inc.

[Docket No. ER05–189–000]

Take notice that on November 5, 2004, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing a Notice of Termination of Original Service Agreement No. 102 under Entergy Services, Inc.'s FERC Electric Tariff, First Revised Volume No. 3 and Supplement No. 1 thereto, the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Louisiana and Cleco Midstream Resources, LLC.

Comment Date: 5 p.m. eastern time on November 26, 2004.

17. Midwest Independent Transmission System Operator, Inc. and Northern Indiana Public Service Company

[Docket No. ER05–190–000]

Take notice that on November 5, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and Northern Indiana Public Service Company (NIPSCO) (collectively, Applicants) filed a joint application under section 205 of the Federal Power Act for approval of transition to formulae rate. Applicants submitted proposed revisions to the Open Access Transmission Tariff of the Midwest ISO to reflect NIPSCO's transition from stated rates to the formulae rates under Attachment O, Rate Formulae of the Tariff. Applicants request an effective date of December 1, 2004.

Applicants state that copies of this filing have been served electronically on all Midwest ISO members, member representatives of transmission customers, and the Midwest ISO Advisory Committee participants, as well as all State commissions within the affected regions. In addition, Applicants state that the filing has been posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC.''

Comment Date: 5 p.m. eastern time on November 26, 2004.

18. Perryville Energy Partners, L.L.C.

[Docket No. ER05–191–000]

Take notice that on November 5, 2004, Perryville Energy Partners, L.L.C. (PEP) tendered for filing an Interconnection and Service Charge Agreement (Agreement) between PEP and Entergy Louisiana, Inc. (Entergy Louisiana) requesting that the Commission permit the Agreement to become effective as of the date that PEP's sale to Entergy Louisiana of the Perryville 718 megawatt natural gas-fired generating facility located in Ouachita Parish near Perryville, Louisiana, becomes effective.

PEP states that copies of the filing were served on Entergy Louisiana and the Louisiana Public Service Commission.

Comment Date: 5 p.m. eastern time on November 26, 2004.

19. PJM Interconnection, L.L.C.

[Docket No. ER05–192–000]

Take notice that on November 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing (1) seven service agreements that were previously filed with and accepted by the Commission, and (2) five service agreements that have been filed with the Commission and for which Commission action is pending to redesignate them with new service agreement numbers. PJM requests waiver to permit the prior Commission-approved effective dates for the agreements previously accepted for filing by the Commission and to permit the effective dates originally requested for the agreements for which Commission action is currently pending.

PJM states that copies of the filing were served on the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on November 22, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3260 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–003]

AES Ocean Express, L.L.C. (Ocean Express); Notice of Intent To Prepare an Environmental Assessment for the Proposed Modifications to the Ocean Express Pipeline Project and Request for Comments on Environmental Issues

November 15, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Minerals Management Service (MMS) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Modifications to the Ocean Express Pipeline Project proposed by Ocean Express in Broward County, Florida, State Waters of Florida, and Federal Waters of the United States.[1] The Ocean Express Pipeline Project received a certificate of public convenience and necessity from the Commission on January 29, 2004 in Docket Nos. CP02–90, *et al.* Ocean Express has requested necessary authorizations for a pipeline right-of-way in Federal waters from the MMS. Ocean Express has now proposed changes to their original proposal, and those proposed changes will be reviewed by Commission and MMS staff. The Ocean Express Pipeline Project modifications reflect the incorporation of tunnel construction methodology for the nearshore portion of the pipeline, as well as certain other design changes, for the natural gas pipeline between the United States and the Bahamas. This EA will be used by the Commission in its decision-making process to determine whether the project modifications are in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida State waters review.

The FERC is the lead agency and the MMS is a Federal cooperating agency for this project because the MMS has jurisdiction by law as well as special expertise regarding the potential environmental impacts associated with that portion of the proposed pipeline that would be installed on the Outer Continental Shelf.

This notice is being sent to landowners, individuals, organizations, and government entities that expressed an interest in the original project and received a copy of FERC's *Final Environmental Impact Statement for the Ocean Express Pipeline Project* (issued November 28, 2003). No new landowners are affected by the proposed modifications. It is also being sent to all identified potential right-of-way grantors. If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

FERC prepared a fact sheet entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

As certificated, the Ocean Express Pipeline Project would consist of a new 24-inch-diameter interstate natural gas pipeline, and certain ancillary facilities, that would extend approximately 54.5 miles from a receipt point on the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas to two delivery points in Broward County, Florida, one at an interconnection with the existing Florida Gas Transmission System (FGT) pipeline at the Florida Power and Light (FPL) Fort Lauderdale Power Plant, and the other at an interconnection with the FPL gas line that serves the FPL Fort Lauderdale plant. Ocean Express's proposed modifications reflect the incorporation of tunnel construction methodology for the nearshore portion of its pipeline, as well as certain other design changes. Ocean Express developed the proposed modifications to address the local gas markets demand for peak period deliverability and certain delays that it has encountered in meeting its proposed construction schedule.

Ocean Express explains that the use of the tunnel construction methodology would allow it to construct the nearshore portion the pipeline using an approximately 14,000-foot-long tunnel, with certain minor route changes to accommodate the methodology, as opposed to the horizontal directional drills (HDDs) that the Commission has already approved. Ocean Express also proposes to increase the pipeline diameter from 24 inches to 26 inches and internally coat the pipeline, to allow for increased hourly flow rates, but does not propose to increase the certificated capacity (842,000 dekatherms/day) of its pipeline. Additionally, Ocean Express proposes to install a pressure reducing station inside the tunnel to reduce the onshore Maximum Allowable Operating Pressure (MAOP) to 1,480 pounds per square inch gauge (psig) or less, from the certificated MAOP of 2,200 psig. An aboveground tunnel shaft/access building and gas vent would also be installed at the Dania Beach Boulevard Traffic Circle.

Ocean Express designed the proposed tunnel construction installation to further minimize the potential for direct impacts and the risk of inadvertent impacts to sensitive marine resources, particularly the hardbottom and coral reef resources that occur in the nearshore environment of the project area. The proposed tunnel modification would replace previously certificated plans to perform two HDDs under the nearshore reef systems, with the HDDs connected by a direct pipelay segment between two of the dominant reef trends. The tunnel modification would avoid the need for offshore construction work spaces to the west of the dominant reef trends. Ocean Express indicates that elimination of those work spaces would minimize direct impacts and significantly reducing the potential for inadvertent impacts in proximity to the reefs (*e.g.*, unanticipated spills, anchor impacts, work vessel passage over reefs, etc.). Additionally, Ocean Express states that the equipment used to construct the tunnel would not use drilling fluids under high pressure, thereby eliminating the potential risk of an inadvertent release of drilling muds, or frac-out, which could potentially have

[1] Ocean Express's application was filed with the Commission on September 9, 2004, as supplemented on September 15, 2004 and September 20, 2004, under section 7 of the Natural Gas Act and part 157 and part 284 of the Commission's Regulations.

occurred in association with the HDD installation methodology.

The proposed tunnel would begin at an entrance point at the Dania Beach Boulevard Traffic Circle (RMP 48.0, TMP 47.5), as proposed with the certificated HDD installation method, and exit approximately 200 feet east of the mapped edge of the easternmost reef trend (TMP 44.8). An entrance shaft, consisting of a 40-foot-diameter by 140-foot-deep, single concrete caisson, would be constructed at the tunnel entry point. From that point, an earth pressure balance (EPB) tunnel boring machine would be used to construct a watertight, approximately 13,500-foot-long, 13.6-foot-diameter, concrete-lined tunnel. At the end of this main tunnel (TMP 44.9), a 42-inch-diameter microtunnel measuring approximately 650-feet-in-length would be constructed by either a microtunnel boring machine or by hydraulic jacking of a casing out to the ocean floor.

Once completed, the tunnel would provide a conduit for installation of the nearshore portion of the pipeline. The pipeline string to be installed within the main tunnel would be assembled inside the tunnel. The pipestring installed within the microtunnel would be prefabricated offshore and pulled back into the microtunnel to accomplish tie-in between the pipeline within the main tunnel and the offshore, direct lay portion of the pipeline. An approximately 2,000-foot-long pipestring would be assembled within an offshore pull corridor using an anchor positioned work barge. A prefabricated pipe support measuring approximately 100-feet-long by 9-feet-wide would be positioned near the microtunnel exit. This pipe support would be used to support the prefabricated pipestring across a span created by the 4 to 6 degree seabed slope at the tunnel exit during pull back into the microtunnel. Following pipeline installation, articulated concrete mats would be used to cover and protect the segment of the pipeline extending from the tunnel exit to a water depth of 200 feet. This concrete mat covered segment of the pipeline would measure approximately 2,300-feet-long by 9-feet-wide and would encompass an area of approximately 0.5 acre.

No onshore alignment changes would be required in association with the proposed modifications. Ocean Express has slightly revised its proposed nearshore route to accommodate the tunnel installation methodology and to minimize construction activities outside the tunnel. The revised nearshore route would reduce the length of the proposed pipeline by approximately 0.5 mile, but would not differ substantively in alignment from the certificated route. Seaward of the tunnel exit point, an approximately 0.8-mile-long segment of pipeline would extend to a tie-in with the previously authorized route at RMP 44.0/TMP 44.0. East of this point, the offshore route would be unchanged by the proposed modifications.

The previously certificated facilities, as modified by the Ocean Express proposal, are summarized in Table 1 below, and the proposed alignment of the modified nearshore project facilities is shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 4.

Land Requirements for Construction

As a result of the tunnel installation methodology, Ocean Express indicates that the offshore temporary workspaces for pipeline installation would be reduced from approximately 1,840 acres to approximately 1,466 acres. The 200-foot-wide construction right-of-way for the offshore segment of the project that was previously authorized would be maintained. All land requirements associated with the tunnel exit/tie-in, pipelay fabrication and construction, and laybarge anchoring would be contained within the 200-foot-wide construction right-of-way and the additional workspace areas identified in Appendix 1. Pipelay construction from TMP 44.2 to the EEZ boundary (MP 0) would be performed using a dynamically positioned laybarge. Following construction, a permanent 25-foot-wide right-of-way would be retained in State of Florida territorial waters (RMP 43.0 to TMP 47.5) for pipeline operation and maintenance. The alignment and width (200 feet) of the proposed permanent right-of-way for the offshore segment of the pipeline in federal waters would be unaffected by the proposed modifications.

TABLE 1.—OCEAN EXPRESS PIPELINE PROJECT SUMMARY OF PREVIOUSLY AUTHORIZED PROJECT FACILITIES AS MODIFIED BY THE CURRENT PROPOSAL

Facility [1]	Pipeline diameter	Approximate length (miles) [2]	Milepost [3]	Location/jurisdiction
Offshore Segment:				
Pipeline	26-inch*	43.0	MP 0.0 to RMP 43.03	U.S. Federal Waters.
Pipeline	26-inch*	*4.5	RMP 43.03 to TMP 47.5	Florida State Waters.
Onshore Segment:				
Pipeline	26-inch*	6.1	TMP 47.5 to 53.62	Broward County.
Pipeline [4]	20-inch	0.7	FPL MP 0.0 to 0.35	Broward County.
Aboveground Facilities [5]	N/A [6]	N/A	TMP 53.62 & TMP 47.5*	Broward County.
Underground Facilities [7]	N/A	N/A	TMP 47.5*	Broward County.
Total Length: 54.3 miles [8]				

* Denotes project facilities or characteristics included in the proposed modification and that would differ from the certificated facilities.

[1] Project facilities include pipeline and associated facilities.

[2] Approximate length provided in statute miles.

[3] ''MP'' refers to Milepost; ''RMP'' refers to Revised Milepost; and ''TMP'' refers to Tunnel Milepost.

[4] Includes dual 20-inch lateral lines to the FPL Fort Lauderdale Power Plant.

[5] The term ''Aboveground Facilities'' for purposes of this table includes the proposed meter stations, mainline shutoff valve, and pig launching/receiving station located at TMP 53.62 and the tunnel shaft/access building and gas vent at TMP 47.5 proposed in association with the modification.

[6] N/A indicates not applicable.

[7] The term ''Underground Facilities'' for purposes of this table includes the pressure reducing station and mainline shutoff valve at TMP 47.5 (located inside the tunnel) proposed in association with the modification.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[8] Does not include 40.4 miles of non-jurisdictional pipeline that would be constructed in waters between the Bahamas and the EEZ.

Ocean Express is not proposing any alignment changes to the onshore portion of the project and does not anticipate that the increase in diameter of the pipeline from 24 inches to 26 inches would affect the size of the onshore construction or permanent rights-of-way. A temporary concrete segment fabrication batch plant would be constructed as part of the tunnel modification and would require approximately 8 to 12 acres of existing light industrial or industrial zoned land in order to fabricate the tunnel concrete segments. Ocean Express anticipates that they would enter into a lease agreement with a local landowner for this land requirement. With the exception of Ocean Express's temporary concrete-segment fabrication batch plant facility, the onshore construction activities would not deviate from certificated land requirements for access roads, additional workspace/storage areas, or pipe and contractor yards. The onshore aboveground facilities would be identical to the certificated project with the exception of a newly proposed tunnel shaft utility/access building and gas vent, which would service the underground pressure reducing station that would be located at the Dania Beach Boulevard Traffic Circle.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology;
- Soils and sediments;
- Water resources;
- Fishery resources, benthic communities, and wildlife;
- Protected, threatened, and endangered species;
- Land use and visual resources;
- Cultural resources;
- Socioeconomics;
- Air quality and noise;
- Reliability and safety; and
- Cumulative impacts.

We will not discuss impacts to certain resource areas since they are not present in the project area, or would not be affected by the proposed facilities in a manner substantially different than has already been evaluated in the certificated project. These resource areas include:

- Onshore vegetation communities, including wetlands;
- Onshore wildlife and fisheries; and
- Recreation.

We will also evaluate possible alternatives to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be included in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Currently Identified Environmental Issues

FERC staff participated in a technical meeting with representatives from Ocean Express and federal, state, and local agencies on September 24, 2004. We also attended a public open house (informational meeting) sponsored by Ocean Express on October 7, 2004. The issues and concerns identified by the commentors during those meetings will be considered in the preparation of the EA.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Ocean Express. This preliminary list of issues may be changed based on your comments and our analysis. The issues include:

- Fishery resources and benthic communities, especially relating to potential impacts to marine hardbottom habitats and coral reef resources;
- Water resources, including the potential for sedimentation and/or turbidity effects associated with ''punch out'' at the eastern terminus of the tunnel;
- Tunnel stability and the potential for subsidence;
- Aquatic toxicity of soil conditioners and foams used in tunnel construction;
- Potential impacts to operations at the U.S. Navy's Naval Surface Warfare Center, Carderrock Division (NSWCCD) resulting from the proposed modifications;
- Increased onshore vehicle traffic and congestion associated with the proposed modified installation method; and
- Safety and security of the proposed modifications.

Ocean Express indicates that the proposed tunnel modification would further avoid or minimize impacts to the nearshore reef systems and significantly reduce the risk of unanticipated impacts, as compared to the HDD construction methodology authorized by the FERC certificate. Table 2 summarizes and compares the anticipated direct and indirect marine habitat impacts associated with the proposed modifications to those associated with the HDD construction methodology. Specifically, the landfall HDD exit point, the 9,100-foot-long concrete mat covered segment between the dominant reef trends, and the offshore HDD entry location would be eliminated under the proposed modification. Additionally, the pre-assembled pipestring that would have been floated over the eastern most reef trend for installation within the landfall HDD bore would be eliminated. Because these elements of the project and their associated construction workspaces would be eliminated, Ocean Express indicates that the tunnel modification would significantly reduce direct impacts and the risk of inadvertent impacts in proximity to the reefs. Further, Ocean Express states that the EPB tunnel boring machine would not use drilling fluids under high pressure, thereby eliminating the potential risk of a frac-out, which could potentially have

[3] ''We'', ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

occurred in association with the HDD installation methodology.

Ocean Express predicts that the equipment that would be used to construct the microtunnel can be operated in a manner that would avoid creation of a sediment plume in the marine environment at the tunnel exit point. Additionally, the tunnel installation methodology would not require dredging to excavate the tunnel exit point, which would be required by the previously approved HDD installation method. Even though the proposed tunnel installation methodology greatly reduces the potential for turbidity and sedimentation generating activities, Ocean Express continues to use its previous estimates for turbidity and sedimentation associated with the HDD installation exit point as a conservative measure of impact estimation. Ocean Express would also continue with its plans to monitor for potential unanticipated environmental damage, both during and after construction.

TABLE 2.—OCEAN EXPRESS PIPELINE PROJECT COMPARISON OF MARINE BENTHIC IMPACTS IN STATE OF FLORIDA WATERS

	Certificated HDD installation method				Proposed tunnel installation method			
	Temporary impact (acres)		Permanent impact (acres)		Temporary impact (acres)		Permanent impact (acres)	
	Habitat type [1]				Habitat type [1]			
Work area segment (state waters)	Sand w/ rubble	Sand	Sand w/ rubble	Sand	Sand w/ rubble	Sand	Sand w/ rubble	Sand
West of Reef 3:								
Direct Impact	0.31	2.91	0.07	1.78	0.00	0.00	0.00	0.00
Indirect Impact	0.00	4.09	0.00	0.00	0.00	0.00	0.00	0.00
East of Reef 3:								
Direct Impact	0.38	1.02	0.16	0.29	0.36	0.86	0.15	0.38
Indirect Impact	0.28	0.69	0.00	0.00	0.28	[2] 0.69	0.00	0.00
Subtotal	0.97	8.71	0.23	2.07	0.64	1.55	0.15	0.38
Total Impact [3]	1.20		10.78		0.79		1.93	

[1] "Sand w/Rubble" (Habitat Type B) consists of sand and rubble habitat with 5 to 20 percent biotal coverage, while the remaining percentage consists of sand and rubble with less than 5 percent biotal coverage. "Sand" (Habitat Type D) consists of sand in proximity to hardbottom/reef resources with less than 5 percent biotal coverage.

[2] This area corresponds to the previous estimates of sedimentation/turbidity impact associated with excavation of the offshore HDD exit location. Ocean Express is continuing to use this value as a conservative estimate of the sedimentation/turbidity impacts that would be associated with the microtunnel exit point.

[3] Total impact includes estimated additive effect of both temporary and permanent impacts.

Ocean Express has reported that after extensive consultation with tunneling experts, review of available geologic data, as well as a review of previously completed tunneling projects, there appears to be no major technical obstacles to successful completion of the proposed tunnel. During tunnel construction, Ocean Express would implement various measures to stabilize the tunnel and minimize the potential for tunnel collapse. The overburden above the tunnel would be maintained at a minimum of 30 feet, and pre-fabricated concrete segments designed to withstand internal and external loading forces would be used to stabilize the tunnel as the EPB tunnel boring machine advances. Additionally, Ocean Express would implement a Tunnel Monitoring and Control Program to ensure that tunnel stability is monitored and maintained. The Commission will evaluate the feasibility of the proposed tunnel modification in consideration of site-specific geologic conditions and experience gained from other tunneling projects.

The U.S. Navy's NSWCCD is located in proximity to the proposed nearshore pipeline route, and a portion of the proposed pipeline would cross a U.S. Navy restricted area. The NSWCCD uses systems that are highly sensitive to magnetic interference and could be affected by the proposed pipeline project. In order to address the Navy's concerns, Ocean Express proposed to construct approximately 3.8 miles of its pipeline using low magnetic pipe. Under the proposed modification, this portion of the pipeline would be reduced to 3.3 miles, but the alignment would still traverse one corner of the Navy restricted area. Ocean Express is coordinating the proposed modifications with the NSWCCD and anticipates amending the February 5, 2003 Memorandum of Agreement with NSWCCD to accommodate technical issues related to the proposed modifications.

Spoil materials removed from the tunnel would be loaded on trucks at the Dania Beach Boulevard Traffic Circle and removed offsite for disposal. Ocean Express estimates that about 8,004 cubic yards of spoil would be removed to construct the tunnel shaft and about 97,330 cubic yards of spoil would be removed to construct the tunnel and microtunnel corridors. Soil conditioners and foaming agents would be used to stabilize the tunnel face during excavation activities and could contaminate spoil material removed during excavation activities. Ocean Express anticipates that proper handling of tunnel spoils would prevent any potential degradation of soil, surface water, or ground water quality.

The pre-fabricated concrete segments used to line the tunnel and the pipeline segments installed within the portion of the tunnel constructed using the EPB tunnel boring machine would be delivered to the Dania Beach Boulevard Traffic Circle construction site. This activity in combination with the removal of spoil from the site could impact local traffic flow patterns. These activities would generate an increased volume of traffic through the duration of the tunnel boring and pipeline installation process, which is expected to last approximately 15 months. Ocean Express is currently in the final stages of revising its traffic study to gauge the anticipated increased truck traffic in and around the Dania Beach Boulevard

Traffic Circle associated with implementation of the proposed installation modifications. Ocean Express will file the traffic study with FERC once the study is complete, but has indicated that it would employ the necessary traffic control devices to ensure that construction activities avoid or minimize any impact to the local traffic flow. Day to day construction activities would be scheduled to account for heavier than usual traffic flow and to avoid high traffic periods. Additionally, an on-site storage facility at the Dania Beach Boulevard Traffic Circle construction site would be designed to hold several days of production materials to give added flexibility.

The pipeline and ancillary facilities associated with the proposed project would be designed, constructed, operated, and maintained in accordance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 CFR part 192, and any other applicable safety standards. These standards govern the distance between sectionalizing block valves and require the pipeline owner to install cathodic protection, use other corrosion-preventing procedures, and perform various maintenance activities. During construction, pipeline weld inspections and hydrostatic tests would be conducted to verify pipeline integrity and ensure the pipeline's ability to withstand the maximum designed operating pressure. Additionally, the proposed tunnel would be designed, constructed, installed, inspected, operated, and maintained, as applicable, in accordance with applicable U.S. Department of Labor, Occupational Health and Safety Administration and local building code requirements. Precautions would also be taken to ensure that the facilities associated with the proposed modifications are secured during operation. The natural gas vent and tunnel shaft utility access building that would be located at the Dania Beach Traffic Circle, would be enclosed within a secured fenced area and the access door to the Tunnel Shaft Utility/Access building would be locked. The door and fence would be alarmed to prevent intruders.

The non-jurisdictional facilities associated with the previously certificated Ocean Express Pipeline Project, which consist of a pipeline and liquefied natural gas terminal and regasification facility that would be located within the jurisdiction of the Bahamian government, are discussed in the FEIS. We will briefly describe the location and status of these facilities in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP02–90–003.
- Mail your comments so that they will be received in Washington, DC, on or before December 20, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 3).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to landowners, individuals, organizations, and government entities that expressed an interest in the original project and received a copy of FERC's Final Environmental Impact Statement for the Ocean Express Pipeline Project (issued November 28, 2003). By this notice we are also asking governmental agencies, especially those in Appendix 4, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. General information about the MMS and detailed information regarding Florida state and federal waters can be accessed at the MMS Internet Web site *(http://www.mms.gov).*

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Finally, public meetings or site visits, if conducted, would be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3259 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–15–000]

Caledonia Energy Partners, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Caledonia Storage Project and Request for Comments on Environmental Issues

November 15, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Caledonia Storage Project involving construction and operation of facilities by Caledonia Energy Partners, L.L.C. (Caledonia) near the town of Caledonia in Monroe and Lowndes Counties, Mississippi.[1] These facilities would consist of eight injection/withdrawal storage wells, 1.98 miles of various diameter pipeline, and 10,650 horsepower (hp) of compression. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' was attached to the project notice Caledonia provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Caledonia wants to convert a nearly depleted natural gas reservoir, known as the Caledonia Field, into a high-deliverability, multi-cycle gas storage field. Modification of the existing underground sandstone reservoir would result in a reservoir capable of storing 11.7 billion cubic feet of working gas with an initial maximum withdrawal capacity of 330 million standard cubic feet per day (MMscfpd), and a maximum injection capability of 260 MMscfpd.

Caledonia seeks authority to construction and operates:

- Eight new injection/withdrawal storage wells;
- Three, 3,550-hp gas engine compressor units and ancillary facilities at a new compressor facility site on the south side of flint hill road;
- About 0.32 mile of small diameter well interconnect pipeline;
- About 0.85 mile of 24-inch-diameter pipeline to connect the wells to the compressor facility; and
- About 0.81 mile of 24-inch-diameter pipeline to connect the compressor facility to Tennessee gas pipeline company's interstate pipeline system.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 62.2 acres of land, including an 85-foot-wide construction right-of-way to install the 24-inch-diameter pipelines. Operation would require use of about 33.1 acres for aboveground facilities (three well pad sites and the compressor facility site) and about 12.0 acres would be maintained as a new 60-foot-wide permanent right-of-way along the pipeline routes. Following construction, about 17.1 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Hazardous waste.
- Endangered and threatened species.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the

[1] Caledonia's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Caledonia. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 34.7 acres of forest land would be permanently impacted through above ground facility construction or permanent conversion to open land.
- A total of 2.6 acres of agricultural land would convert to industrial use.
- One perennial waterway, seven intermittent waterways, and two emergent wetlands would be crossed by the proposed project.
- Two noise sensitive areas (*i.e.*, residences) are located approximately 600 feet and 1,500 feet from the proposed compressor facility site.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 3.
- Reference Docket No. CP05–15–000.
- Mail your comments so that they will be received in Washington, DC on or before December 17, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3258 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–7–000]

Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sayre Nominated Storage Service Project and Request for Comments on Environmental Issues

November 10, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Sayre Nominated Storage Service Project (Sayre), proposed by Natural Gas Pipeline Company of America (Natural).

The Project would include abandonment of natural gas pipeline and construction and operation of additional facilities in Beckham County, Oklahoma.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Natural provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Natural seeks authority to increase its peak day withdrawal level at Sayre from 400 million cubic feet per day (MMcf/day) to 600 MMcf/day and the maximum working gas capacity at Sayre in Beckham County, Oklahoma, from 51.1 billion cubic feet (Bcf) to 57.1 Bcf. This would be accomplished by drilling 22 new injection/withdrawal wells, adding 8.3 miles of pipeline, and installing 2 new compressor units (inside Natural's existing Compressor Station 184) with a total rating of 8,285 horsepower. Natural also proposes to abandon by removal and in place, about 1.1 miles of natural gas pipeline.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the facilities (including access roads) would affect about 162.7 acres of land. Of this, about 110 acres would revert to previous use while the rest would be maintained for operation of the facilities. The acreage affected includes the 1.1 mile of natural gas pipeline that would be abandoned. Natural would use a 100-foot-wide right-of-way during construction of its new pipeline, and subsequently maintain a 50-foot-wide permanent right-of-way. The construction right-of-way would be expanded at special work areas (*e.g.*, pipeline crossing of the North Fork of the Red River and road crossings).

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

We will also evaluate possible alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified issues (noise impacts on nearby residents, threatened and endangered species, and land use) that we think deserve our attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural. Issues we consider may change based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP05–7–000.
- Mail your comments so that they will be received in Washington, DC on or before December 11, 2004.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on ''login to file'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''comment on filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of

[1] Natural's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Practice and Procedure (18 CFR 385.214, see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the docket number field. Be sure you have selected an appropriate date range. For assistance, contact FERCOnline Support at *FERCOnlineSupport@ferc.gov*, or call toll-free (866) 208–3676 or TTY 202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3251 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2801–000]

Littleville Power Company, Inc.; Notice of Intent To File Application for Subsequent License or Application for Exemption From Licensing

November 10, 2004.

a. *Type of Filing:* Notice of Intent to File Application for a Subsequent License or Application for Exemption from Licensing.[1]

b. *Project No.:* 2801–000.

c. *Date Filed:* October 28, 2004.

d. *Submitted By:* Littleville Power Company, Inc.—current licensee.

e. *Name of Project:* Glendale Hydroelectric Project.

f. *Location:* On the Housatonic River, in the Town of Stockbridge, Berkshire County, Massachusetts. The project uses no federal facilities and occupies no federal lands.

g. *Filed Pursuant to:* 18 CFR 16.19(b) of the Commission's regulations.

h. *Effective Date of Current License:* November 1, 1979.

i. *Expiration Date of Current License:* October 31, 2009.

j. *The Project Consists of:* (1) A reinforced concrete dam 30 feet high and 180 feet long; (2) a reservoir with a surface area of 40 acres at a normal water surface elevation of 811 feet m.s.l.; (3) a 1,500-foot-long, 40-foot-wide unlined canal with a mean water depth of 5 feet; (4) an intake structure leading to a 250-foot-long, 12-foot-diameter steel penstock; (5) a powerhouse with a concrete foundation and quarry rock walls containing 4 turbine/generator units with a total installed capacity of 1,140 kW; (6) a 1,500-foot-long, 13.8 kV transmission line; and (7) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Kevin Webb, Littleville Power Company, Inc., One Tech Drive, Suite 220, Andover, MA 01810, (978) 681–1900, extension 809.

l. *FERC Contact:* Kristen Murphy, (202) 502–6236, *kristen.murphy@ferc.gov.*

m. Pursuant to 18 CFR 16.20 of the Commission's regulations, applications for subsequent license must be filed with the Commission at least 24 months prior to the expiration of the existing license. Applications for license for this project must be filed by October 31, 2007.

[1] For an exemption from licensing project, 18 CFR section 4.30(29) requires additional capacity.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2801) to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item k above.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3250 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

November 10, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of licenses.

b. *Project Nos.:* 1855–028, 1892–018, 1904–038, 2077–045, and 2323–144.

c. *Date Filed:* October 29, 2004, as supplemented November 2, 2004.

d. *Applicants:* USGen New England, Inc. (USGenNE, Transferor), TransCanada Hydro Northeast Inc. (TC Hydro NE, Transferee).

e. *Name and Location of Projects:* Bellows Falls, P–1855: Connecticut River in Windham and Windsor Counties, Vermont and Cheshire and Sullivan Counties, New Hampshire; Wilder, P–1892: Connecticut River in Windsor and Orange Counties, Vermont and Grafton County, New Hampshire; Vernon, P–1904: Connecticut River in Windham County, Vermont and Cheshire County, New Hampshire; Fifteen Mile Falls, P–2077: Connecticut River in Grafton and Coos Counties in New Hampshire and Caledonia and Essex Counties in Vermont; and Deerfield, P–2323: Deerfield River in Windham and Bennington Counties in

Vermont and Franklin and Berkshire Counties in Massachusetts.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Transferor: William J. Madden, Jr., John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, (202) 371–5700. For Transferee: Kenneth L. Wiseman, Andrews Kurth LLP, 1701 Pennsylvania Ave., NW., Suite 300, Washington, DC 20006, (202) 662–2700.

h. *FERC Contact:* James Hunter, (202) 502–6086

i. *Deadline for Filing Comments, Protests, and Motions to Intervene:* December 13, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number(s) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The applicants seek Commission approval to transfer the licenses for the projects listed in item e. from USGenNE to TC Hydro NE.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number (P–1855, etc.) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3252 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AI05–1–000]

Accounting for Pipeline Assessment Costs; Notice of Proposed Accounting Release

November 5, 2004.

Take notice that the Chief Accountant of the Federal Energy Regulatory Commission proposes to issue an Accounting Release (attached) to provide guidance on accounting for pipeline assessment activities. The proposed Accounting Release would require an entity to recognize costs incurred in performing pipeline assessments that are a part of a pipeline integrity management program as maintenance expense and would apply to all Commission jurisdictional entities.

The Commission has reviewed the proposed Accounting Release. At the conclusion of the comment period specified at the end of this notice, the Chief Accountant will consider the comments received, make any necessary changes and circulate the proposed final Accounting Release to the Commission for review. Upon the Commission's approval, a final Accounting Release will be issued by the Chief Accountant.

All interested parties are invited to send electronic or written comments on all matters in this proposed Accounting Release to the Commission. Comments are requested from those who agree with the provisions of the proposed Accounting Release as well as from those who do not. Comments are most helpful if they identify the issues or specific paragraph or group of paragraphs to which they relate and clearly explain the problem or question. Those who disagree with provisions of this proposed Accounting Release are asked to describe their suggested alternatives, supported by specific reasoning.

Specifically, responses to the following questions are requested:

1. The Proposed Accounting Release concludes that pipeline assessment activities performed as part of a pipeline integrity management program should be accounted for as maintenance expense. Do you agree or disagree with the conclusion? If you disagree, please provide your alternative view and basis for it.

2. Are there instances, other than in connection with a major pipeline rehabilitation project, where pipeline assessment costs should be capitalized? If so, please provide particulars of the circumstances under which the costs would qualify for capitalization, the applicable Uniform System of Accounts Instruction and/or other authoritative literature that supports such a determination.

3. This proposed Accounting Release contemplates an effective date of January 1, 2005. Should this Accounting Release instead be applied retroactively for all periods? If so, provide a basis for your conclusion.

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of their comments to the Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

In addition to publishing the full text of this document in the **Federal Register,** the filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 20, 2004.

Magalie R. Salas,

Secretary.

Attachment—Federal Energy Regulatory Commission Proposed Accounting Release No. 18 Accounting for Pipeline Assessment Costs

Summary

1. This Accounting Release clarifies that the pipeline assessment costs of a pipeline integrity management program are properly accounted for as maintenance and charged to expense in the period incurred. These costs generally include hydrostatic testing, smart pigging, and direct pipeline assessment techniques.

Reasons for Issuing Accounting Release

2. The Commission has become aware of diverse practices in accounting for pipeline assessment activities. For example, some entities view pipeline assessments as activities performed specifically for the purpose of testing and reporting on the condition and integrity of the existing pipeline to prevent failure and recognize these costs as maintenance expense. While other entities capitalize some or all pipeline assessment costs where the assessment leads to any property changes that qualify as a capital addition or replacement. These diverse accounting practices reduce the comparability of financial statements among jurisdictional entities and make reviews of existing rates more difficult. This Accounting Release would clarify the proper accounting for pipeline assessment costs, promote comparability of financial information, and reduce uncertainty.

Basis for Conclusion

3. Under the requirements of the Commission's Uniform System of Accounts, costs incurred to inspect, test, and report on the condition of existing plant to determine the need for repairs or replacements and testing the adequacy of repairs made are recognized as maintenance expense.[1] Additionally, costs incurred for work performed specifically for the purpose of preventing failure or maintaining the life of plant are recognized as maintenance expense.[2]

4. The Commission, however, has permitted the capitalization of pipeline testing costs related to existing plant in certain instances. In response to pipeline safety legislation in 1968, the Chief Accountant issued Accounting Release No. 8 (AR–8). In AR–8, costs incurred under a planned maintenance program to meet the requirements of the legislation were to be treated as maintenance expense. However, entities were allowed to capitalize retest costs in those instances where initial tests of a constructed pipeline did not meet the requirements of the new legislation, making it necessary to retest so that the full capacities of the pipeline could be utilized. When such costs are capitalized all prior testing costs related to the specific property were to be retired in accordance with Gas Plant Instruction No. 10.

5. The Chief Accountant has also permitted entities to capitalize hydrostatic testing costs when the work was done in connection with major pipeline rehabilitation projects involving significant replacements and modifications of facilities.[3] These rehabilitation projects extended the overall pipeline system's useful life and serviceability. Capitalization of pipeline assessment costs in these instances was permitted on the conceptual basis that future accounting periods would be benefited.[4] The pipeline assessment activities in these instances were not, however, associated with any on-going maintenance programs.

6. Natural gas and oil pipelines must now comply with new Federal regulations regarding pipeline integrity management programs issued by the Office of Pipeline Safety (OPS) of the U.S. Department of Transportation.[5] Under these regulations, natural gas pipeline and hazardous liquid pipeline operators are required to develop, implement, and follow an integrity management program for segments of pipeline in high consequence areas. The pipeline integrity management programs require pipeline companies to (a) identify and characterize applicable threats to pipeline segments that could impact a high consequence area; (b) conduct a baseline assessment and periodic re-assessments of these pipeline segments; (c) mitigate significant defects discovered from the assessment; and (d) continually monitor the effectiveness of its integrity program and modify the program as needed to improve its effectiveness. To make initial and subsequent assessments, pipeline companies will use hydrostatic tests, smart pigs, or direct assessment activities.

7. Under OPS's regulations for pipeline integrity management programs, the pipeline assessment activities that pipelines must undertake are to determine the condition of the pipe. If any anomalies are detected, repairs or replacements are then made to maintain and improve pipeline integrity and reliability. The assessment activities required under a pipeline integrity management program constitute steps performed as part of an on-going inspection and testing program.

8. The Commission's accounting rules, as described above, provide that costs incurred to inspect, test and report on the condition of plant to determine the need for repairs or replacements are to be charged to maintenance expense in the period the costs are incurred. We view the various testing techniques that will take place because of the new safety regulations to constitute a work activity falling within our rules for maintenance expense. Further, expenditures for pipeline assessment activities under a pipeline integrity program do not meet the capitalization criteria established by the Commission, as discussed above, as the costs are not incurred as part of a one-time rehabilitation project to extend the useful life of the pipeline system, rather the expenditures are made as part of an on-going inspection and testing or maintenance program.

9. Accordingly, pipeline assessment costs of a pipeline integrity management program are properly accounted for as maintenance and charged to expense in the period incurred. Appendix A includes three examples that illustrate the provisions of this Accounting Release.

10. This Accounting Release shall be effective January 1, 2005.

Appendix A—Illustrative Examples of the Application of the Accounting Release

Example 1

A pipeline company owns and operates a large pipeline system. The company has established 100 foot lengths of pipe as a retirement unit for purposes of determining when the costs of property changes are to be charged to expense or capitalized as a component of pipeline property. During the year, the Company assesses 100 miles using hydrostatic testing and direct assessment of pipe at a cost of $1.5 million. As a result of the assessment, the company replaces a continuous 2 mile segment of the pipe at a cost of $750,000 and replaces or sleeves 3

[1] *See* Operating Expense Instruction No. 2, Maintenance, Item No. 2 of 18 CFR parts 101 and 201 (2004).

[2] *See* Operating Expense Instruction No. 2, Maintenance, Item No. 3 of 18 CFR parts 101 and 201 (2004).

[3] In Docket No. AC94–149–000, Northwest Pipeline Corporation (NPC) was permitted to capitalize the costs of pipeline coating and hydrostatic testing costs incurred to rehabilitate its pipeline system. NPC was also permitted to establish retirement units for pipeline costing and hydrostatic testing. When coating costs and hydrostatic testing costs were capitalized as part of a rehabilitation project, NPC was required to retire all prior coating and testing costs in accordance with Gas Plant Instruction No. 10. Capitalization of pipeline assessment activities in this case was permitted as they were considered part of a one-time rehabilitation project which significantly enhanced and increased the life of NPC's pipeline system as a whole, although the work was spread out over a number of years.

[4] *See* Statement of Financial Accounting Concepts No. 6, paragraph 25.

[5] 49 CFR part 192, Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Pipelines); Final Rule effective January 14, 2004 and 49 CFR part 195, Pipeline Safety: Pipeline Integrity management in High Consequence Areas (Hazardous Liquid Operators with 500 or more miles of Pipeline); Final Rule effective February 15, 2002.

other separate sections of the pipeline each being less than 100 feet in length at a total cost of $175,000. At the conclusion of all work, the company hydrostatically tests the affected segments of pipe to appropriate operating pressure at a cost of $150,000.

The assessment activity, regardless of whether hydrostatic testing, direct assessment, or other techniques are utilized constitutes work undertaken specifically for the purpose of determining the condition of existing pipeline facilities. Although the assessment did result in identifying a need to replace a segment of line in excess of the designated property unit of 100 feet, only the direct construction costs of $750,000 and a related portion of the hydrostatic testing costs incurred following completion of the construction work should be capitalized. All of the costs incurred to assess the condition of the existing pipeline should be charged to maintenance expense in the period they are incurred. Also, all of the costs of replacing or sleeving the 3 pipe sections that are each less than a retirement unit, including a portion of the related hydrostatic testing costs incurred after completion of the work should be charged to expense in the period incurred.

Example 2

A pipeline company owns and operates a large pipeline system. Its pipeline system is comprised of segments with different size pipe and different maximum allowable operating pressures (MAOP). The company is experiencing capacity constraints on certain pipeline segments because of increased demand for gas in markets it serves.

The company hydrostatically tests a 5 mile segment of its system to assess its compliance with pipeline safety regulations at a cost of $1,000,000. In conjunction with facility additions of $200,000, the company uses the opportunity provided by the hydrostatic testing to certify an increase in the MAOP of the 5 mile pipeline segment from 750 pounds per square inch gauge (PSIG) to 1000 PSIG. The increased MAOP of the 5 mile segment now equals the MAOP at the upstream and downstream ends of the pipeline segments of which it is interconnected and the company is able to alleviate an operational constraint and increase the available capacity of its pipeline system.

The costs of the hydrostatic test of $1,000,000 should be charged to maintenance expense since they were incurred for the purpose of determining the condition of existing pipeline facilities, a maintenance activity. While a benefit of the assessment activity was an increase in the capacity of the pipeline segment, the company would have had to incur the costs to hydrostatic test the pipeline segment to comply with pipeline safety requirements regardless whether an increase in MAOP resulted. Thus, the company cannot capitalize any of the hydrostatic test costs in this instance. The company would, however, be allowed to capitalize the $200,000 of facility additions.

Example 3

A pipeline company previously received approval from the Chief Accountant to capitalize hydrostatic test and smart pigging costs when the work was done in connection with a major pipeline rehabilitation project involving significant replacements and modifications of facilities. The rehabilitation project significantly extended the overall pipeline system's useful life.

During 20X1, the Company assesses 50 miles of the eastern leg of its system using hydrostatic testing and smart pigging at a cost of $1.0 million. The assessment was done as part of the pipeline's integrity management program to comply with DOT regulations. As a result of the assessment, the company replaces a continuous 5 mile segment of pipe at a cost of $1.5 million. In addition, the company undertakes a major rehabilitation of the western leg of its system. As a part of the $20 million rehabilitation project, the company incurs $500,000 of hydrostatic test costs to determine the exact nature of replacements to be made, along with incurring $250,000 of hydrostatic test costs to determine that the replacements were adequately made.

The costs of the hydrostatic and smart pigging assessment activities performed on the eastern leg of the system of $1.0 million would be expensed as maintenance, since it was performed as a part of the company's integrity management program. The company would be allowed, however, to capitalize the $1.5 million of direct construction costs it incurred, since they replaced a segment of line in excess of the designated property unit of 100 feet.

In regards to the major rehabilitation project on the western leg of the company's system, the company would be allowed to capitalize assessment related costs, if it has in place appropriate internal controls for distinguishing between costs incurred related to ongoing assessment activities under its pipeline integrity program and those assessment costs that are a part of a rehabilitation project. As a minimum, in order to qualify for capitalization, the company must have controls in place that clearly define the scope of the rehabilitation project, separately budget for the project as a capital item, provides for a projected completion date for the project and adequately sets forth how costs are assigned to construction projects.

If the above capitalization criteria are met, the company would be allowed to capitalize the $500,000 of hydrostatic test costs it incurred to determine the scope of the replacements needed related to the major rehabilitation of the western leg of its system. The company would also be allowed to capitalize the $250,000 of hydrostatic test costs it incurred to determine that the replacements were adequately made. Capitalization of hydrostatic test costs in this instance is appropriate since the rehabilitation project significantly extends the useful life of the western leg of the company's system. Previous testing costs related to the rehabilitated segments would of course be retired in accordance with Gas Plant Instruction No. 10.

[FR Doc. E4–3224 Filed 11–18–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–7]

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 November 8, 2004, Through November 12, 2004

Pursuant to 40 CFR 1506.9.

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: December 20, 2004, Contact: Ray Spencer (307) 739–5400.

Revision of FR Notice Published on 09/24/2004: CEQ Wait Period Ending 10/25/2004 has been Reestablished to 12/20/2004. Due to Incomplete Distribution of the FEIS at the time of Filing with USEPA under Section 1506.9 of the CEQ Regulations.

EIS No. 040527, DRAFT EIS, AFS, IN, German Ridge Restoration Project, To Restore Native Hardwood Communities, Implementation, Hoosier National Forest, Tell City Ranger District, Perry County, IN, Comment Period Ends: January 3, 2005, Contact: Ron Ellis (812) 275–5987.

EIS No. 040528, DRAFT EIS, FHW, OH, Eastern Corridor Multi-Modal (Tier 1) Project, To Implement a Multi-Modal Transportation Program between the City of Cincinnati and Eastern Suburbs in Hamilton and Clermont Counties, OH, Comment Period Ends: January 3, 2005, Contact: Mark VonderEmbse (614) 280–6854.

EIS No. 040529, DRAFT EIS, COE, MA, Cape Wind Energy Project, Construct and Operate 30 Wind Turbine Generators on Horseshoe Shoal in Nantucket Sound, MA, Comment Period Ends: January 18, 2005, Contact: Karen Adams (978) 318–8338.

EIS No. 040530, FINAL EIS, FRC, LA, Sabine Pass Liquefied Natural Gas (LNG) and Pipeline Project, Construction and Operation LNG Import Terminal and Natural Gas Pipeline Facilities, Several Permits,

Cameron Parish, LA, Wait Period Ends: December 20, 2004, Contact: Thomas Russo (866) 208–3372.

EIS No. 040531, FINAL EIS, AFS, MO, East Fredericktown Project, To Restore Shortleaf Pine, Improve Forest Health, Treat Affected Stands and Recover Valuable Timber Products, Mark Twain National Forest, Potosi/Fredericktown Ranger District, Bollinger, Madison, St. Francois and Ste. Genevieve Counties, MO, Wait Period Ends: December 20, 2004, Contact: Ronnie Raum (573) 364–4621.

EIS No. 040532, FINAL EIS, FHW, IN, IN–25 Transportation Corridor Improvements from I–65 Interchange to U.S. 24, Funding, Right-of -Way and U.S. Army COE Section 404 Permit Issuance, Hoosier Heartland Highway, Tippecanoe, Carroll and Cass Counties, IN, Wait Period Ends: December 20, 2004, Contact: Matt Fuller (317) 226–5234.

EIS No. 040533, FINAL EIS, FHW, WA, WA–104/Edmonds Crossing Project, Connecting Ferries, Bus and Rail, Funding, NPDES Permit and COE Section 10 and 404 Permit, City of Edmonds, Snohomish County, WA, Wait Period Ends: December 20, 2004, Contact: Peter Eun (360) 753–955 .

EIS No. 040534, FINAL EIS, COE, FL, Picayune Strand Restoration (formerly Southern Golden Gate Estates Ecosystem Restoration), Comprehensive Everglades Restoration Plan, Implementation, Collier County, FL, Wait Period Ends: December 20, 2004, Contact: Bradley A. Foster (904) 232–2110.

EIS No. 040535, DRAFT EIS, AFS, UT, Duck Creek Fuels Treatment Analysis, To Reduce Fuels, Enhance Fire-Tolerant Vegetation and Provide Fuel Breaks, Dixie National Forest, Cedard City Ranger District, Kane County, UT, Comment Period Ends: January 3, 2005, Contact: David Swank (435) 865–3700.

Dated: November 16, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–25711 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–8]

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 the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–J02045–WY Rating EC2, Yates Petroleum Federal #1 Oil and Gas Lease, Application for Permit to Drill (APD), Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Duck Creek, Campbell County, WY.

Summary: While the EIS thoroughly discussed environmental impacts and proposed mitigation measures, EPA did express environmental concerns due to groundwater and wildlife impacts if controlled surface use stipulations are waived.

ERP No. D–AFS–L39061–WA Rating EC2, Fish Passage and Aquatic Habitat Restoration at Hemlock Dam, Implementation, Gifford Pinchot National Forest, Mount Adams District, Skamania County, WA.

Summary: EPA has no objections to the dam removal alternatives, B and C which promote improved water quality, fish passage and aquatic habitat. EPA expressed environmental concerns with alternatives D, E, and No Action because they continue to impede fish mitigation and/or would not improve water quality or aquatic habitat. The Final EIS should address sediment quality, revegetation, monitoring plans, and consultation with affected Tribes.

ERP No. DS–NRC–E06023–AL Rating EC1, Generic EIS—License Renewal of Nuclear Plants, Joseph M. Farley Nuclear Plants, Units 1 and 2, Supplemental 18 to NUREG–1437 (TAC Nos. MCO768 and MCO769), Houston County, AL.

Summary: EPA expressed concern and recommended the radiological monitoring of all plant effluents, and the appropriate storage/disposition of radioactive waste.

Final EISs

ERP No. F–AFS–F65045–MN Virginia Forest Management Project Area, Resource Management Activities on 101,000 Acres of Federal Land, Implementation, Superior National Forest, Eastern Region, St. Louis County, MN.

Summary: The final EIS addressed EPA's previous concerns regarding mitigation/monitoring activities for sand and gravel mining and deer herbivore.

ERP No. F–AFS–L65441–OR Easy Fire Recovery Project and Proposed Nonsignificant Forest Plan Amendments, Timber Salvage, Future Fuel Reduction, Road Reconstruction and Maintenance, Road Closure, Tree Planting and Two Non-significant Forest Plan Amendments, Implementation, Malheur National Forest, Prairie City Ranger District, Grant County.

Summary: The final EIS addressed EPA's major concerns with impacts from sediment to water quality and temperature. However, given uncertainties with estimating sediment loading EPA encourages the Forest Service to maximize woody debris on slopes after harvest to reduce sediment delivery to streams and the obliteration of road 2600391 in the harvest area.

ERP No. F–COE–K36139–CA Hamilton City Flood Damage Reduction and Ecosystem Restoration, Propose to Increase Flood Protection and Restore the Ecosystem, Sacramento River, Glenn County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–J40164–MT

US–2 Highway Corridor Improvement Project, Reconstruction between Havre to Fort Belknap to Replace the Aging US–2 Facility, U.S. Army COE Section 404 Permit, Hill and Blaine Counties, MT.

Summary: EPA is pleased by the selection of the improved two-lane with passing lanes alternative because it involves fewer adverse environmental impacts than a four-lane alternative. EPA's remaining environmental concerns are potential impacts to water quality and aquatic habitat, including wetlands, and impacts to wildlife connectivity and fragmentation.

ERP No. F–NOA–L91022–00

Programmatic EIS—Pacific Coast Groundfish Bycatch Management Plan, Establishment of Policies and Program Direction to Minimize Baycatch in the West Coast Groundfish Fisheries, WA, OR and CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: November 15, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–25713 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0363; FRL–7686–5]

Pinoxaden; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0363, must be received on or before December 20, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. 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 number OPP–2004–0363. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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. 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.1. Once in the system, select ''search,'' then key in the appropriate docket ID 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.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through handdelivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, 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 totechnical 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0363. 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 e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0363. Incontrast 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.

iii. *Disk or CD ROM.* You may submit comments on a diskor CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0363.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0363. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding theelements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 3, 2004

Lois Rossi,

Director, Registration Division, Office of PesticidePrograms.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection

EPA has received a pesticide petition 4F6817 from Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, North Carolina, 27419–8300 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pinoxaden in or on the raw agricultural commodities (RAC) wheat grain at 0.70 parts per million (ppm), wheat, forage at 3.0 ppm, wheat, hay at 1.75 ppm, wheat, straw at 1.5 ppm, barley, grain at 0.70 ppm, barley, hay at 1.25 ppm, and barley, straw at 0.60 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA;

however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism of pinoxaden was studied in wheat using radiolabeled pinoxaden. The metabolism in plants is well understood and the data is adequate for selection of residues of concern for tolerance setting purposes. The metabolic profile in plants supports the use of an analytical method that accounts for parent pinoxaden and its major metabolites.

2. *Analytical method*. Syngenta Crop Protection, Inc., has submitted practical analytical methodology for detecting and measuring levels of pinoxaden and its three major metabolites. The method is based upon commodity specific cleanup procedures and High Performance Liquid Chromatography (HPLC) determination with triple stage quadruple mass spectrometry (LC/MS/MS). The limit of quantitation (LOQ), as demonstrated by the lowest acceptable recovery samples, is 0.01 ppm for grain, and 0.02 ppm for forage, hay, and straw.

3. *Magnitude of residues*. A magnitude of the residueprogram was performed with pinoxaden on full guideline geography to support uses on all types of wheat, and barley crops.

B. Toxicological Profile

1. *Acute toxicity*. Pinoxaden technical and the end-use formulation have very low acute toxicity by oral, dermal, and inhalation exposure routes. For pinoxaden technical, the oral LD_{50} in rats is >5,000 millgrams/kilogram (mg/kg). The rat dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is 5.22 milligrams/liter (mg/L) air. Pinoxaden technical is irritating to the eye and non-irritating to the skin. The end-use formulation is mildly to moderately irritating to the eye and skin, the oral LD_{50} in rats is 3,129 mg/kg, the rat dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >5 mg/L. Neither the technical nor the formulation are skin sensitizers.

2. *Genotoxicty*. Pinoxaden has been tested for its potential to induce gene mutation and chromosomal changes in six different test systems. Pinoxaden technical was negative in a bacterial gene mutation assay, a mouse lymphoma mammalian cell mutation assay and an unscheduled DNA synthesis (UDS) assay in rat hepatocytes. In *in vitro* tests for chromosome aberrations in Chinese hamster ovary cells, a small dose related increase was observed at dose levels that produced cytotoxicity. To assess the biological significance of this single positive *in vitro* finding, two in *vivo* tests were performed. When tested in a micronucleus test in bone marrow cells of the mouse at dose levels up to a limit dose of 2,000 mg/kg, pinoxaden did not induce micronuclei, and produced no significant toxicity in the animals. In an *in vivo* UDS study in rats, pinoxaden was negative in this assay for DNA repair. Based on the complete database, it is concluded that pinoxaden is not genotoxic.

3. *Reproductive and developmental toxicity*. Pinoxadenproduced no evidence of reproductive toxicity. In a rat multi-generation reproduction study, pinoxaden technical was administered orally by gavage to rats at dosages of 0, 10, 50, 250, and 500 mg/kg/day over two generations. At 500 mg/kg, parental toxicity was observed as decreased body weight gain (F_0 males) and kidney pathology accompanied by increased water consumption (F_0 and F_1 males and females.) At 500 mg/kg/day, F_1 and F_2 pups had lower body weight gain during lactation. Changes in organ weights were seen in pups at this dose level, but no treatment-related adverse findings were observed for pups ineither generation upon histologic examination. At 10, 50 and 250 mg/kg/day, there was no indication of any adverse effects of treatment. On the basis of the results obtained in this study, the no observed adverse effect level (NOAEL) for both sexes and generations was 250 mg/kg/day. There were no effects on the reproductive parameters and the NOAEL for reproductive toxicity was >500 mg/kg/day. Offspring effects were minor and were observed only at dose levels that produced parental toxicity. There were no indications of any differences in sensitivity to pinoxaden exposure between the different generations or between parental animals andoffspring, and it is concluded that pinoxaden does not cause reproductive toxicity.

In a rat teratogenicity study, pinoxaden technical was administered by gavage to 24 pregnant rats per group at dose levels of 0, 3, 30, 300 or 800 mg/kg/day from days 6 through 20 of gestation. Maternal body weight gain was significantly reduced at the top two dose levels compared to controls. There was no effect of treatment on the number of implantation sites, post-implantation loss, live litter size, and sex ratios, and no significant findings were observed in the maternal animals upon necropsy. Gravid uterus weights, carcass weights and net weight change from day 6 post coitum were significantly reduced at the top dose level. In the presence of the maternal toxicity, mean fetal body weights were reduced at 800 mg/kg/day, and slightly reduced ossification was observed at both 800 and 300 mg/kg bw/day. There were no treatment-related external or visceral observations in the fetuses. Pinoxaden, was not teratogenic in rats when tested under the conditions of this study. The no observed effect level (NOEL) for both maternal and developmental toxicity was 30 mg/kg/day.

Pinoxaden, was evaluated in rabbit developmental toxicity studies. In an initial guideline rabbit study, pinoxaden technical was administered by gavage to pregnant rabbits at dose levels of 0, 10, 30, and 100 mg/kg/day from days 7 through 28 of gestation. Maternal body weight gain was significantly reduced at 100 mg/kg/day. Fetal body weight was reduced at the 100 mg/kg dose level. A second guideline developmental toxicity study was conducted in the rabbit at 0, 10, 30, and 100 mg/kg/day. Maternal toxicity was observed at 30 and at 100 mg/kg/day in the form of reduced overall weight gain compared to control animals. There was no effect of treatment on the number, growth or survival of the fetuses *in utero* and no evidence for an adverse effect on fetal development. There were no treatment-related fetal external, visceral or skeletal findings. In conclusion, the full set of studies indicated that pinoxaden is not teratogenic in rabbits. The maternal NOEL was 10 mg/kg/day, and the NOEL for developmental toxicity was 30 mg/kg/day.

In conclusion, there is no evidence that developing offspring are more sensitive than adults to the effects of pinoxaden, and it is concluded, that pinoxaden does not cause primary developmental toxicity or reproductive toxicity.

4. *Subchronic toxicity*. Pinoxaden technical was evaluated in a number of subchronic studies. In a 3–month gavage study in rats the NOAEL was 300 mg/kg, the highest dose tested. Higher doses in a 28–day rat study caused kidney toxicity at 600 mg/kg, with a NOAEL of 300 mg/kg. In a 3–month gavage study in mice, the NOAEL was 100 mg/kg. Effects at higher dose levels involved reduced body weights at 1,000 mg/kg, reduced hemoglobin at doses greater than or equal to 400 mg/kg (females only) and renal tubule basophilia and increased water consumption in males at 1,000 mg/kg. In a 3–month study in dogs the NOAEL was 100 mg/kg, and inappetance, body weight loss and gastro-intestinal effects were seen at 250 mg/kg. In a 28–day dermal (rat) study,

the NOAEL was 1,000 mg/kg, the highest dose tested, and only a mild, low-grade inflammatory response at the treatment site was noted. In a 90–day subchronic neurotoxicity study in rats, pinoxaden was not neurotoxic when administered by gavage at dose levels of 0, 10, 100 and 500 mg/kg/day. There were no treatment-related neurobehavioral or motor activity effects, no macroscopic findings and no microscopic findings in central or peripheral nervous tissue. In addition, pinoxaden was devoid of any acute neurotoxic effects when administered to rats at a single oral dose of up to 2,000 mg/kg.

5. *Chronic toxicity*. Pinoxaden was not oncogenic in rats or mice. In a 2–year combined carcinogenicity/chronic toxicity study in rats, pinoxaden technical was administered by daily gavage at dose levels of 0, 1, 10, 100, 250, and 500 mg/kg/day. Toxicity was observed in the form of decreased body weight (500 and 250 mg/kg/day), depressed survival (500 and 250 mg/kg/day males only), and kidney pathological changes (500, 250, and 100 mg/kg/day). The kidney pathology was associated with changes in blood chemistry parameters and other associated effects. A minor and sporadic epithelial thickening of the duodenum was observed mainly at 250 and 500 mg/kg. There was no evidence of a carcinogenic effect in this study. In conclusion, chronic treatment of pinoxaden to rats produced effects in only one major target organ at high dose levels, involving chronic progressive nephropathy and associated effects related to kidney toxicity. The NOEL was 10 mg/kg for males and females based on kidney effects at 100 mg/kg and above, and pinoxaden was not carcinogenic.

In an 18–month mouse oncogenicity study, pinoxaden technical was administered by gavage at dose levels of 0, 5, 40, 300 and 750 mg/kg body. Toxicity was observed in the form of decreased body weight gain at 300 mg/kg/day (females only) and 750 mg/kg/day (males and females), decreased survival rates (40, 300 and 750 mg/kg/day males), minor hematology effects (300 and 750 mg/kg), increased liver weights (300 and 750 mg/kg, with increased glycogen deposition) and increased kidney weights (750 mg/kg in females only). Increased epithelial thickening occurred in the small intestine of males and females at 300 and 750 mg/kg. The reduced survival at the higher dose levels in males was a consequence of the gavage dosing procedure, as demonstrated by macro- and micropathology evidence of lung involvement as the single major factor contributing to death. Other than increased mortality in males, there were no treatment-related effects at 40 mg/kg/day. The NOEL for this study was 5 mg/kg for both males and females, and pinoxaden was not carcinogenic.

In a 12–month chronic oral toxicity study in dogs, pinoxaden technical was administered by capsule at dose levels of 0, 5, 25 or 125 mg/kg/day. At 25 and 125 mg/kg/day, treatment-related clinical observations were limited to an increased incidence of salivation at dosing and minor gastrointestinal effects, which were not considered adverse. There were noadverse effects on body weights or food consumption. Minor changes in hematology and blood clinical chemistry parameters were observed at 25 and 125 mg/kg/day compared to control animals. However, due to the small magnitude of the effects and the absence of any treatment-related effects on organ weights or any pathology findings, these clinical pathology changes are considered to be of no toxicological significance. There were no treatment-related micropathology changes seen at any dose level. The NOAEL in this study was 125 mg/kg/day.

6. *Animal metabolism*. Animal metabolism of pinoxaden is well understood. Pinoxaden is rapidly absorbed and excreted when administered to rats, and tissue residues are extremely low, with no accumulation upon repeated dosing. Similar rapid absorption and excretion was seen in mice and rabbits. The metabolic pathway is similar in rodents, rabbits, goats and hens.

7. *Metabolite toxicology*. Toxicity of pinoxaden metabolites has been tested and is well understood. The toxicological profile of all metabolites supports the proposed definition of residue.

8. *Endocrine disruption*. Pinoxaden does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that pinoxaden has any effect on endocrine function in developmental or reproductive studies. Furthermore, histological investigation of endocrine organs in chronic dog, mouse, and rat studies did not indicate that the endocrine system is targeted by pinoxaden.

C. Aggregate Exposure

1. *Dietary exposure*. The potential for chronic and acute dietary exposure from pinoxaden through food and water sources is addressed below.

i. *Food*. Dietary (food) risk evaluations for pinoxaden were performed using field trial residues. A percent of crop treated value of 20% was estimated for wheat and barley based upon Syngenta's estimates of economic, pest, and competitive pressures. Wheat and barley are the only RAC included in the assessment. For the chronic assessments, the average wheat and barley field trial residue values were utilized. For the acute assessment, the two highest field trial residues were averaged and this highest average field trial residue (HAFT) was used in the assessment for all non-blended and partially blended commodities. All dietary exposure evaluations were made using the Dietary Evaluation Model (DEEM™, version 7.87) from Exponent, Inc. and the USDA's Continuing Survey of Food Intake by Individuals (1994–96) with the supplemental 1998 children's survey. Chronic exposure was compared to a chronic reference dose of 0.10 mg/kg bw/day is based upon a NOAEL of 10 mg/kg bw/day from the chronic rat study. The acute reference dose of 0.3 mg/kg bw/day for the subpopulation of women 13–49 years of age is based upon the developmental NOAEL of 30 mg/kg/day in developmental toxicity studies in rabbits. For all other subpopulations, the acute reference dose of 1.5 mg/kg bw/day is based upon a NOAEL for acute effects at 150 mg/kg/day in a range finding rabbit developmental toxicity study. A 100x uncertainty factor was assumed for both the chronic and acute assessments. The chronic exposures were expressed as a percent of a reference dose of 0.10 mg/kg bw/day. The acute exposures (at the 99.9th percentile) were expressed as a percent of a reference dose of 0.3 mg/kg bw/day for women 13–49 years of age and 1.5 mg/kg bw/day for all other subpopulations. Secondary residues in animal commodities were calculated by constructing diets for beef and dairy cattle, poultry and swine in order to calculate anticipated residues in meat, fat, milk and pork. The beef cattle diet was used to calculate meat, fat and organ meats residues. The dairy cattle diet was used to estimate residues in milk. The swine diet was used for secondary residues in pork commodities and the poultry diet was used for residues in poultry commodities. The chronic animal diet was calculated using averaged field trial residues where as the acute animal diet used averaged field trial residues on blended commodities such as grain and the HAFT on non-blended commodities such as hay, straw and forage. Beef (cattle and dairy) and swine transfer factors were derived from a lactating goat metabolism study, where the

animals were dosed with 121 ppm pinoxaden. Poultry transfer factors were derived from a hen metabolism study, where the animals were dosed with 97 ppm pinoxaden.

The results were favorable in both acute and chronic assessment scenarios. Acute exposures at the (99.9th percentile) were 0.11% of the acute reference dose (0.3 mg/kg bw/day) for women 13–49 years of age, and less than 0.05% for all other subpopulations. The chronic exposure values were negligible (<0.05% of the chronic reference dose of 0.10 mg/kg bw/day for all subpopulations).

ii. *Drinking water*. The acute estimated environmental concentrations of pinoxaden (including the major degradates) in surface and ground water are 1.366 ppb (PRZM/EXAMS) and 0.003234 ppb (SCI-GROW), respectively. The acute Population Adjusted Dose (aPAD) for pinoxaden (plus degradates) is 0.3 mg/kg bw/day for women 13–49 years of age and 1.5 mg/kg bw/day for all other population subgroups. From the acute dietary exposure analysis, the highest acute food exposure from the uses of pinoxaden was 0.000509 mg/kg/day at the 99.9th percentile for the 20–49 years old subpopulation. Using this information, acute drinking water levels of comparison (DWLOC acute) were calculated for pinoxaden and the major degradates, ranging from 8,990 to 52,487 ppb. Based on this analysis, pinoxaden (plus degradates) estimated environmental concentrations (EECs) do not exceed the calculated acute DWLOCs. The chronic estimated environmental concentration of pinoxaden (including the major degradates) in surface water is 0.21137 ppb (annual average value from PRZM/EXAMS). The chronic PAD for pinoxaden (plus degradates) is 0.10 mg/kg bw/day. From the chronic dietary exposure analysis, the highest exposure estimate of 0.000047 mg/kg bw/day was determined for the children 1–2 years old subpopulation. Based on the EPA's ''Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' document (62 FR 63662, December, 2, 1997), chronic DWLOC chronic were calculated for pinoxaden (plus degradates), ranging from 999.5 to 2999.4 ppb. Based on this analysis, pinoxaden (plus degradates) EECs do not exceed the calculated chronic DWLOCs.

2. *Non-dietary exposure*. There are no sources ofnon-dietary exposure, as pinoxaden will be registered for agricultural uses only and will not be available for any residential or public uses.

D. Cumulative Effects

The potential for cumulative effects of pinoxaden and other substances that have a common mechanism of toxicity has also been considered. Pinoxaden, is a member of the new phenylpyrazolin class of herbicides. There is no reliable information to indicate that toxic effects produced by pinoxaden would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate toconsider only the potential risks of pinoxaden in an aggregate risk assessment.

E. Safety Determination

1. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of pinoxaden, data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat have been considered. In a multi-generation reproductive study, there were no indications of any differences in sensitivity to pinoxaden exposure between the different generations or between animals and offspring. The parental NOAEL for both sexes was considered to be 250 mg/kg/day. Offspring effects were not observed at dose levels that did not produce parental toxicity. Pinoxaden was not teratogenic and not directly toxic to the progeny in a developmental toxicity study in rats. The NOEL for both maternal and developmental toxicity was 30 mg/kg/day. Pinoxaden was not teratogenic in rabbits, and the maternal NOEL was 10 mg/kg/day. The NOEL for fetuses was 30 mg/kg/day. Since the NOEL for fetal effects was higher than the NOEL for maternal effects, there was no indication of a greater sensitivity of fetuses to pinoxaden administration. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database. Based on the current toxicological requirements, the database for pinoxaden relative to prenatal and postnatal effects for children is complete. Further, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that RfDs of 0.3 mg/kg/day (acute exposures to women 13–50 yrs of age), 1.5 mg/kg/day (acute exposures to general population) and 0.10 mg/kg/day (chronic expsoures) are appropriate for assessing aggregate risk to infants and children of pinoxaden. Chronic and acute aggregate exposures to all infants (<1 year old) is less than 0.2% of the acute and chronic RfDs. Therefore, based on the completeness and reliability of the toxicity database, Syngenta concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pinoxaden residues.

F. International Tolerances

There are no tolerances or maximum residue limits set for pinoxaden in any country at the time of this filing.

[FR Doc. 04–25714 Filed 11–18–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7838–9]

E–Docket ID No. ORD–2004–0003; Draft Proposed Sampling Program To Determine Extent of World Trade Center Impacts to the Indoor Environment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Public Comment Period for Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment.

SUMMARY: On October 21, 2004, EPA published a **Federal Register** notice (69 FR 61838) announcing the availability of the External Review Draft entitled, *Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment* (EPA/600/R–04/169A), and the beginning of a 30-day public comment period. At the request of members of the Lower Manhattan community and labor organizations who have said an extension is needed for them to formulate their comments, EPA is extending the public comment period until January 3, 2005. EPA will consider the public comment submissions in revising the document.

DATES: The public comment period will end on January 3, 2005. Technical comments should be in writing and must be postmarked by January 3, 2005.

ADDRESSES: The External Review Draft, *Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment,* is

available via the Internet on the web page of the World Trade Center (WTC) Expert Technical Review Panel, *http://www.epa.gov/wtc/panel/.* Comments may be submitted electronically, by mail, by facsimile or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For further information on the draft sampling proposal, please contact Matthew Lorber at (202) 564–3243 or *lorber.matthew@epa.gov.* For further information regarding the WTC Expert Technical Review Panel, please contact Lisa Matthews at (202) 564–6669 or *matthews.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. How To Submit Information to E–Docket

EPA has established an official public docket for information pertaining to this action, Docket ID No. ORD–2004–0003. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov.*

An electronic version of the official 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, to access the index listing of the contents of the official public docket, and to view 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 EPA Dockets. As indicated above, information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket; the same information will not be available for public viewing in EPA Dockets. Copyrighted material also will not be placed in EPA Dockets but will be referenced there and available as printed material in the official public docket.

Persons submitting information should note that EPA's policy makes the information available as received and at no charge for public viewing in EPA Dockets. This policy applies to information submitted electronically or in paper, except where restricted by copyright, CBI or statute.

Unless restricted as above, information submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Physical objects will be photographed, where practical, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

You may submit information electronically, by mail, by facsimile or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Information received or submitted past the close date will be marked ''late'' and will only be considered if time permits.

If you submit information electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details 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 person submitting the information and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, this situation may delay or prevent the Agency's consideration of the information.

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. ORD–2004–0003. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address or other contact details unless you provide it with the information you submit.

Information may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2004–0003. 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 directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in EPA's electronic public docket.

You may submit information on a disk or CD ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: November 12, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–25715 Filed 11–18–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2680]

Petitions for Reconsideration of Action in Rulemaking Proceeding

October 29, 2004.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by December 6, 2004. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6).

Number of Petitions Filed: 1.

Subject: In the Matter of Modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval (ET Docket No. 03–201).

Number of Petitions Filed: 1.

Subject: In the Matter of Rules and Regulations Implementing the

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CG Docket No. 04–53).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25743 Filed 11–18–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 3, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Embry W. Williams, Jr., Amarillo, Texas; to acquire additional voting shares of Union BancShares, Inc., Clayton, New Mexico, and thereby indirectly acquire additional voting shares of First National Bank of New Mexico, Clayton, New Mexico.

Board of Governors of the Federal Reserve System, November 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25689 Filed 11–18–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. DBT Holding Company, Vidalia, Georgia; to engage *de novo* through its subsidiary, DBW Technologies, LLC, Atlanta, Georgia, in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, November 15, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25690 Filed 11–18–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Ali Sultan, M.D., Ph.D., Harvard School of Public Health: On October 19, 2004, the U.S. Public Health Service (PHS) entered into a Voluntary Exclusion Agreement with the President and Fellows of Harvard College (Harvard) and Ali Sultan, M.D., Ph.D., former Assistant Professor of Immunology and Infectious Diseases at the Harvard School of Public Health (HSPH). Based on HSPH's inquiry report, the respondent's admission, and additional analysis conducted by ORI in its oversight review, PHS found that Dr. Sultan engaged in scientific misconduct in research funded by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grant 1 P01 AI060332–01, ''Chemical genetics and malaria drug development,'' Subproject 2, ''Screening of target-rich environment.''

Specifically, PHS and Harvard found that:

- Dr. Ali Sultan plagiarized text, plagiarized three figures showing results of an immunofluorescence assay, a phosphorimage, and northern blot analysis (Figures 3, 4, and 5, respectively), and falsified the data as results of experiments on *Plasmodium bergheii,* instead of *P. falciparum* as reported in a subproject of the PHS grant application 1 P01 AI060332–01, ''Chemical genetics and malaria drug development.''

- Dr. Ali Sultan fabricated portions of an e-mail from his postdoctoral student that he presented to the HSPH inquiry committee purportedly to falsely implicate the student in the submission of the plagiarized materials for the grant application.

The Voluntary Exclusion Agreement states that for a period of three (3) years, beginning on October 19, 2004:

(1) Dr. Sultan agreed to exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government as defined in the debarment regulations at 45 CFR part 76; and

(2) Dr. Sultan agreed to exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Dated: November 10, 2004.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 04–25648 Filed 11–18–04; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Community-Based Interventions for Alcohol-Impaired Driving

Announcement Type: New.

Funding Opportunity Number: CE05–024.

Catalog of Federal Domestic Assistance Number: 93.136.

Dates:

Letter of Intent deadline: December 20, 2004.

Application deadline: February 7, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 2410(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280 b(a)] of the Public Service Health Act, as amended.

Background: Prevention of alcohol-impaired driving is among the most important strategies to reduce motor vehicle-related injuries and deaths. ''Healthy People 2010: Health Objectives for the Nation'' has set objectives of reducing alcohol-related motor vehicle fatalities to no more than 4.0 per 100,000 persons and reducing alcohol-related motor vehicle injuries to no more than 65 per 100,000 persons, from 1998 baselines of 5.9 and 113, respectively. To meet these objectives, the nation must reduce alcohol-impaired driving, community by community.

According to health promotion theory, a multifaceted approach to the prevention of alcohol-impaired driving is desirable due to the potential for different interventions to work synergistically. The implementation and evaluation of multifaceted community-based interventions that target alcohol-impaired driving is necessary to measure the effectiveness of such efforts and provide data to inform future efforts.

Purpose: This research study is a cooperative agreement that seeks to evaluate interventions to decrease alcohol-impaired driving in community settings and the resulting deaths and injuries. This announcement is appropriate for organizations that are currently conducting research of multifaceted, community-based intervention that targets alcohol- and/or motor vehicle-related injuries.

Funds will be provided to: (1) Evaluate the supplementary benefits from adding one or more strategies to reduce alcohol-impaired driving to an existing multifaceted community-based program to prevent alcohol- and/or motor vehicle-related injuries; or (2) evaluate the results of an existing, effective multifaceted community-based intervention to reduce alcohol-impaired driving when applied to another community with different demographic characteristics.

This project addresses the ''Healthy People 2010'' focus areas of Injury and Violence Prevention and Adverse Consequences of Substance Use and Abuse.

Measurable outcomes of the project will be in alignment with the following performance goals for the National Center for Injury Prevention and Control (NCIPC):

- Conduct a targeted program of research to reduce injury-related death and disability.

Outcomes should also be in alignment with the following research priorities in transportation safety from the National Center for Injury Prevention and Control (NCIPC) Research Agenda:

- Evaluate strategies to implement and disseminate known, effective interventions to reduce alcohol-impaired driving and test the effectiveness of new, innovative strategies.
- Develop methodologies for and evaluate the effectiveness of various means to translate transportation safety research findings into public policy.

The grantees are expected to widely disseminate the outcomes through traditional mechanisms, such as professional and peer-reviewed journal publications.

Research Objectives

- Nature of the research problem—

Research is needed to measure the effectiveness of multifaceted community-based interventions in reducing alcohol-impaired driving.

- Scientific knowledge to be achieved through research supported by this program—

This research will help develop a better understanding of the extent to which: (1) Specific components of multifaceted interventions contribute to their effectiveness in reducing alcohol-impaired driving, and (2) outcomes generalize across communities with different demographic characteristics.

Objectives of This Research Program

- To assess the effectiveness of either: (1) Adding one or more strategies to reduce alcohol-impaired driving to an existing multifaceted community-based intervention to reduce alcohol- and/or motor vehicle-related injuries; or (2) implementing an existing community-based intervention targeting alcohol-impaired driving that has evidence of effectiveness in the current community to a separate community that has different demographic characteristics.
- To obtain process-related information regarding barriers to implementation of such interventions and the means to overcome them. This process and outcome information will be used to inform future community-based programs to reduce alcohol-impaired driving.

The goals of the announcement can be accomplished in either of two ways. First, an existing community-based intervention can be supplemented by adding strategies targeting alcohol-impaired driving. For example, sobriety checkpoints could be integrated into a multifaceted intervention targeting high-risk alcohol consumption and related injuries. Alternatively, an existing community-based intervention targeting alcohol-impaired driving that has evidence of effectiveness in the current community could be implemented in a separate community that has different demographic characteristics. For example, an intervention that is underway in an urban community could be expanded to a rural community.

Research and Experimental Approaches To Achieve the Objectives

The preferred approaches to assessing the effectiveness of the interventions include quasi-experimental research designs using time series data, comparison communities, or both (as appropriate given pre-existing evaluation plans). Baseline measures of variables related to alcohol-impaired driving should be collected before implementation of the intervention or addition of the new intervention strategy(s). Direct assessment of driver blood alcohol content levels in roadside surveys is the preferred outcome variable. However, other acceptable outcome variables would be self-reported alcohol-impaired driving from appropriately designed telephone surveys or crashes likely to be alcohol-related, such as single-vehicle nighttime crashes.

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of violence. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow

the guidelines in the following references:

Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

Activities

Awardee activities for this program are as follows:

1. This study will require the existence of a core coalition (or coalitions) that would ideally include representatives from the following groups:

- Community leaders, groups, and organizations (*e.g.*, policy makers, safety advocates, schools, youth organizations, local media, health care providers, and social service agencies)
- Public health departments
- Transportation and traffic safety agencies
- Governors' highway safety representatives
- Law enforcement
- Academic evaluation experts

2. Applicants will be expected to: (1) Incorporate one or more additional strategies related to alcohol-impaired driving into an existing community-based intervention; or (2) expand an existing, effective multifaceted community-based intervention to prevent alcohol-impaired driving to a community with different demographic characteristics.

Examples of effective or innovative strategies that the applicant is encouraged to consider include:

- Sobriety checkpoints to reduce alcohol-impaired driving. Key components of the intervention: Officer training in appropriate practices; implement or increase the frequency of sobriety checkpoints (or roving patrols if checkpoints are not feasible); develop a strategy for publicizing checkpoints through earned media (*e.g.*, news stories) and/or paid media.
- Server intervention training. Key components of the intervention: Face-to-face training regarding legal obligations and methods of preventing patron intoxication for servers and other staff; training and/or on-site consultation with managers on responsible practices.
- Community-wide designated driver promotion. A key component of the intervention: A substantial majority of drinking establishments in the community offer and promote incentives for designated drivers.

Applicants who choose to incorporate additional strategies into an existing community-based intervention may select other promising or innovative interventions to prevent alcohol-impaired driving. Justification for the selected interventions should be provided in the application. Applicants who choose to expand an existing community-based intervention to an additional community must provide some evidence of the effectiveness of the existing intervention and issues related to generalizability in the new community.

Applicants will also be expected to collect outcome data on the effectiveness of interventions in reducing alcohol-impaired driving, such as changes in alcohol-related crashes, injuries, or deaths, and perform process evaluations from community-based activities designed to reduce alcohol-impaired driving.

CDC Activities for This Program Are as Follows:

1. Assist to provide up-to-date scientific information, technical assistance, and guidance in project matters, where and when requested.

2. Provide technical assistance and guidance in analysis and dissemination of results, including assistance in the preparation of manuscripts, where and when requested.

3. Assist in ensuring human subjects assurances and protections are in place as necessary.

4. Monitor and evaluate the scientific and operational accomplishments of the project, as needed. This may be accomplished through periodic site visits, telephone calls, electronic communication, and bi-annual reports.

5. Convene meetings with recipient for the exchange of information.

6. Review and approve, if needed, IRB protocols initially, and assist in filing IRB continuation applications, at CDC, on at least an annual basis until the research study, including analysis, is completed.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: E11.

FY Funds: 2005.

Approximate Total Funding: $350,000 (This amount is an estimate and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $350,000 (This amount is for the first 12-month budget period and includes both direct and indirect costs. Approximately $1,050,000 total is available over the entire three years of the project period.)

Floor of Award Range: None.

Ceiling of Award Range: $350,000 (This ceiling is for the first 12-month budget period and includes both indirect and direct costs.) If the budget proposed exceeds this amount, it will not be eligible for review, and will be discarded.

Anticipated Award Date: September 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Federally recognized Indian tribal organizations
- State, local, and tribal public health departments
- Transportation and traffic safety agencies
- Research Institutions
- Colleges and Universities
- Private non-profit organizations
- For-profit organizations

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a state application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

Eligible applicants will be limited to those currently conducting a multifaceted community-based intervention trial targeting alcohol-impaired driving, other high-risk alcohol use, or motor vehicle-related injuries. Due to the time and expense involved in building community coalitions, implementing interventions, and planning evaluations, the available funds are not sufficient to adequately support a trial for which these steps have not already taken place.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

- If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.
- Late applications will be considered non-responsive. *See* section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- In order to plan the application review more effectively and efficiently, CDC requires that you submit a Letter of Intent (LOI) to apply for this program. *See* ''IV.3. Submission Dates and Times'' for more information on deadlines.
- The applicant should provide evidence that the performing organization is conducting a multifaceted community-based intervention to prevent alcohol-and/or motor vehicle-related injuries that could feasibly be expanded according to the terms of this RFA. This expansion could be accomplished either by adding a new alcohol-impaired driving strategy to the intervention, or by implementing the intervention in an additional community.
- The applicant should provide evidence of effective and well-defined collaborative relationships within the performing organization and among the coalition members that will ensure implementation of the proposed activities. Documentation, such as letters of collaboration, describing the specific commitments and responsibilities that will be undertaken by the coalition members and community organizations must be included in an appendix.
- The applicant and its collaborative team should provide evidence of prior experience in implementing and evaluating community-based interventions. This experience must be documented by including publications such as those from peer-reviewed journal articles or technical reports in the appendix of the application.
- The recipient should provide evidence of access to target populations and experience with accessing community leaders and community-level groups.
- The applicant must provide a written evaluation plan for the existing community-based intervention that details how the added intervention strategies or site will be incorporated. This plan should include: (1) A list of outcome measures and the data source for each measure, and (2) baseline measurement results for each outcome variable.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Applications that do not meet the above requirements will be considered non-responsive.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770/488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: 2 pages
- Font size: 12-point unreduced
- Single-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770/488–2700, or contact GrantsInfo, Telephone 301/435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format.

In addition to the instructions provided in the PHS 398 for writing the research plan on page 2 of the PHS 398 form, structure the research plan using the following components: (1) Statement of the problem, (2) Purpose of the proposed research, (3) Methods, including study population, data sources and any statistical analyses to be performed, and (4) Implications for

prevention. The narrative portion of the application must not exceed 25 double-spaced pages with unreduced 12-point font.

The research plan (abstract) should answer the following questions:

- Does the research plan state the hypothesis?
- Does the research plan describe the objectives?
- Does the research plan state the importance of the research and how it is innovative?
- Does the research plan outline the methods that will use to accomplish the goals?
- Is the language of the research plan simple and easy to understand for a broad audience?

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Letter of Intent (LOI): December 20, 2004.

CDC requires that you submit a LOI if you intend to apply for this program. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, failure to submit a timely LOI will preclude you from submitting an application.

Application Deadline Date: February 7, 2005.

Explanation of Deadlines: **LOIs and applications must be received in the CDC procurement by 4 p.m. Eastern time on the deadline date.** If you submit your LOI and application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application is not received in the CDC Procurement and Grants office by the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770/488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for State and local governmental review of proposed Federal assistance applications. You should contact your State single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.

Sufficient time and resources should be devoted to preparing an acceptable IRB package. Funds for human subjects recruitment and human subjects research will be withheld until appropriate IRB approval has been obtained.

- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341; Telephone: 770/488–4037, Fax: 770/488–1662, E-mail: *cipert@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—[#CE05–024], CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to:

Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work

that by its nature is not innovative, but is essential to move a field forward.

The Review Criteria Are as Follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field? Will study advance scientific knowledge of how to implement and evaluate community-based interventions for preventing alcohol-impaired driving.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? To what extent do the applicant's work plan and timetable include:

- The identification of representatives to be named as members of the coalition, including a description of the areas of expertise covered by each; the specific roles and responsibilities of each in implementing this project; methods for making decisions; etc.
- Memorandum of agreement and understanding or letters of support from these collaborating organizations as an appendix, and the extent to which these letters indicate that the applicant and the other collaborating organizations have established a ''working partnership'' which specifies the active roles each will have in the study.
- Plans for collecting or obtaining and analyzing baseline (pre-intervention) and follow-up data for the measures of effectiveness.
- A description of the process used in selecting the intervention strategies to be implemented or sites to be added.
- A description of proposed methods for implementing and evaluating the additional intervention strategies or sites.
- Initial plans to rigorously evaluate the interventions, including appropriate measures of effectiveness. Measures should be objective and quantifiable and include measures of alcohol-impaired driving and/or alcohol-related crashes.
- Availability of adequate facilities and appropriately trained staff to carry out this activity.
- Acknowledgement of potential problem areas and plans to consider alternative tactics.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies? If new, innovative strategies to reduce alcohol-impaired driving are tried, what is the rationale for selecting them and the likelihood they will succeed?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the principal investigator, co-investigator, or subcontractor have extensive experience in implementing community-based research and programs? Does the Principal Investigator have the authority to manage the project?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed study take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? To what extent have the applicant and proposed collaborators documented:

- Their history and current capacity to provide a leadership function in convening and facilitating the work of the coalition.
- Their history and current capacity to provide a leadership function in the implementation and evaluation of the selected alcohol-impaired driving prevention activity.
- Their history and current capacity to present findings at national conferences and prepare peer-reviewed manuscripts.
- Their organizational capacity to realize the objectives of the cooperative agreement.
- Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.
- A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included.
- Resumes, biosketches, and/or position descriptions (*i.e.* for current staff, in-kind, and proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate.
- A continuation plan in the event that key staff leave the project, how new staff will be smoothly integrated into the project, and assurances that resources will be available when needed for this project.
- Previous experience of project staff to submit required reports on time.

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Has the investigator developed an adequate plan for disseminating the study results?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Applicants should consider the need for IRB submissions early in the grant cycle to avoid delays and restrictions on funds.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects:

The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that

is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group convened by the National Center for Injury Prevention and Control in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Applications deemed to have the highest scientific merit will receive a second programmatic level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by an external peer review committee, the Special Emphasis Panel (SEP), to determine if the application is of sufficient and scientific merit to warrant further review by the SEP. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. A dual review process will evaluate applications that are complete and responsive.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee SEP, recommendations by the external secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

The primary review will be a peer review conducted by the SEP. A committee of reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100—500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered would be the same as those considered by the SPRS.

The Subcommittee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review Subcommittee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

- The results of the primary review including the application's priority score as the primary factor in the selection process.
- The relevance and balance of proposed research relative to the NCIPC programs and priorities.
- The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010'', the Institute of Medicine report, ''Reducing the Burden of Injury'', and the NCIPC Injury ''Research Agenda.''
- Budgetary considerations including the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities
- Geographic diversity
- Racial/ethnic diversity
- Balance of intervention approaches and strategies
- Consistency with research priorities in CDC's Injury Research Agenda
- Availability of funds within categories of violence and injury funding streams.

V.3. Anticipated Announcement of Award Dates

September 1, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NOA) from the CDC Procurement and Grants Office. The NOA shall be the only binding, authorizing document between the recipient and CDC. The NOA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.

- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–14 Accounting System Requirements.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements (HIPAA).

Additional information on AR–1 through AR–24 can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

- AR–25 Release and Sharing of Data.

Starting with the December 1, 2004, receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements). The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count towards the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet Web site at: *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Dissemination activities.

g. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: 770/488–2700.

For scientific/research issues, contact: L.J. David Wallace, MS, Injury Prevention Specialist, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Atlanta, GA 30341; Telephone: 770/488–4712, E-mail: *Dwallace2@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, PhD., Scientific Review Administrator, Associate Director for Extramural Research, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02; Atlanta, GA 30341; Telephone: 770/488–1430, E-mail: *gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: James Masone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: 770/488–2736, E-mail: *ZFT2@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: November 10, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–25672 Filed 11–18–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10052 and CMS–370, 377, 378, R–54]

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:* Extension of currently approved collection; *Title of Information Collection:* Recognition of Pass-Through Payment for Additional (new) Categories of Devices under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR part 419; *Use:* Information is necessary to determine eligibility of medical devices for establishment of additional device categories for payment under

transitional pass-through payment provisions as required by section 1833(t)(6) of the Social Security Act. *Form Number:* CMS–10052 (OMB#: 0938–0857); *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; Total *Annual Responses:* 12; Total *Annual Hours:* 192.

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Ambulatory Surgical Center (ASC) Health Insurance Benefit Agreement, ASC Request for Certification, ASC Survey Report and Supporting Regulations in 42 CFR 416.41, 416.43, 416.47, and 416.48; *Use:* The ASC Health Insurance Benefits Agreement form is utilized for the purpose of establishing eligibility for payment under Title XVIII of the Social Security Act. The ASC Request for Certification form is utilized as an application for facilities wishing to participate in the Medicare program as an ASC. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met. It also promotes data retrieval from the Online Data Input Edit (ODIE system, a subsystem of the Online Survey Certification and Report (OSCAR) system by the Centers for Medicare and Medicaid Services (CMS) Regional Offices (RO)). The ASC Report Form is an instrument used by the State survey agency to record data collection in order to determine supplier compliance with individual conditions of coverage and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ODIE/OSCAR system at the CMS ROs. This form includes basic information on compliance (*i.e.*, met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself; *Form Number:* CMS–370, 377, 378, R–54 (OMB#: 0938–0266); *Frequency:* Annually and Other: once; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 4,312; Total *Annual Responses:* 4,312; Total *Annual Hours:* 2,241.

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 on (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: November 10, 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. 04–25720 Filed 11–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10102]

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:* New Collection; *Title of Information Collection:* National Implementation of the Hospital CAHPS Survey; *Form No.:* CMS–10102 (OMB# 0938–NEW); *Use:* Hospital CAHPS, part of the Hospital Quality Alliance, is an effort to provide comparative performance information on hospitals to the public. HCAHPS includes a standardized survey instrument and data collection protocol allowing for flexibility in the mode of administration. The goals of the HCAHPS are to offer consumers choice and create incentives for hospitals to improve performance in areas that are important to patients. The current version of the questionnaire and implementation strategy has been tested and modified to reflect public input. CMS will begin training and implementation for HCAHPS following National Quality Forum endorsement and the Office of Management and Budget approval.; *Frequency:* Monthly; *Affected Public:* Individuals or households; *Number of Respondents:* 2,855,250; *Total Annual Responses:* 2,855,250; *Total Annual Hours:* 285,525.

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: November 10, 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. 04–25721 Filed 11–18–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act of 1992; Extension of Application Deadline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of extension of application deadline.

SUMMARY: The Food and Drug Administration (FDA) is announcing an extension for acceptance of applications to its continuous marketing applications (CMA) Pilot 2 program implemented under the guidance for industry entitled ''Continuous Marketing Applications: Pilot 2–Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA.'' The extension applies only to the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) review divisions that have not received acceptable applications for participation in the Pilot 2 program.

DATES: Submit written or electronic comments on agency guidances at any time. FDA will accept applications through December 31, 2004, for participation in the CMA Pilot 2 program per the restrictions described in the **SUMMARY** section of this document.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist either office in processing your request. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

John Jenkins, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–594–3937, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 6, 2003 (68 FR 57696), FDA announced the availability of a guidance entitled ''Continuous Marketing Applications: Pilot 2–Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA.'' This guidance is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). The guidance discusses how the agency will implement a CMA Pilot 2 program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of development for certain Fast Track drug and biological products.

Under the CMA Pilot 2 program, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to be considered for participation in the CMA Pilot 2 program. The CMA Pilot 2 program is an exploratory program, and FDA will evaluate its impact on the investigational phase of drug development. Under the pilot program, a maximum of one Fast Track product per review division in CDER and CBER will be selected to participate. The guidance provides information regarding the selection of applications for the CMA Pilot 2 program, the formation of agreements between FDA and applicants on the investigational new drug (IND) communication process, and other procedural aspects of the CMA Pilot 2 program.

Per section III.A.4 of the guidance, applicants were originally asked to apply for participation in the CMA Pilot 2 program from October 6, 2003, through December 8, 2003. For review divisions that had not received any acceptable CMA Pilot 2 program applications by December 8, 2003, applications were also accepted between February 9, 2004, and September 30, 2004. This notice further extends that deadline to December 31, 2004, to ensure inclusive and relevant results from the CMA Pilot 2 program. A description of the application submission process, evaluation criteria, and selection process is in the guidance. Applications will be accepted only in CDER and CBER divisions that have not previously selected a Pilot 2 application. Information regarding the CDER and CBER divisions that are available to select the CMA Pilot 2 program application can be found on FDA's Web site at *http://www.fda.gov/cder/pdufa/CMA.htm*. For each of these divisions, the first application received that adequately meets the evaluation criteria will be accepted into the CMA Pilot 2 program and applicants will be informed within 6 weeks of application submission.

II. Electronic Access

Persons with access to the Internet can obtain the guidance at *http://www.fda.gov/cder/guidance/index.htm* or at *http://www.fda.gov/cber/guidelines.htm*.

Dated: November 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–25799 Filed 11–17–04; 1:52 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0460]

Draft Guidance for Industry on Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 4, 2004. This document announced the availability of a draft guidance for industry entitled ''Listed Drugs, 30-Month Stays, and Approval of ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers.'' The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT:

Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–24675, appearing on page 64314 in the **Federal Register** of Thursday, November 4, 2004, the following correction is made:

1. On page 64314, in the second column, ''Docket No. 2004N–0087'' is corrected to read ''Docket No. 2004D–0460''.

Dated: November 12, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–25647 Filed 11–18–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Best Practices for the Licensing of Genomic Inventions

AGENCY: National Institutes of Health, Public Health Service, Health and Human Services (HHS).

ACTION: Notice of proposed best practices for the licensing of genomic inventions; request for comments.

SUMMARY: The Public Health Service's (PHS) primary mission is to acquire new knowledge through the conduct and support of biomedical research to improve the health of the American people. PHS seeks to maximize the public benefit whenever PHS owned or funded technologies are transferred to the commercial sector. These best practices for the licensing of government-funded genomic inventions are recommendations to the intramural PHS technology transfer community as well as to PHS funding recipients.

DATES: Comments must be received no later than January 18, 2005.

ADDRESSES: Comments on the proposed best practices must be submitted to: Dr. Bonny Harbinger, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, Maryland, 20852; telephone: (301) 594–7700; e-mail: *harbingb@mail.nih.gov*.

SUPPLEMENTARY INFORMATION:

Best Practices for the Licensing of Genomic Inventions

Introduction

The Public Health Service's (PHS) primary mission is to acquire new knowledge through the conduct and support of biomedical research to improve the health of the American people. This mission is advanced by the intramural research efforts of government-owned and -operated laboratories and by the extramural research efforts funded through grants and contracts. PHS seeks to maximize the public benefit whenever PHS owned or funded technologies are transferred to the commercial sector. Motivated by this goal, we offer the following best practices for the licensing of government-funded genomic inventions.

Genomic inventions include a wide array of technologies and materials such as cDNAs; expressed sequence tags (ESTs); haplotypes; antisense molecules; small interfering RNAs (siRNAs); full-length genes and their expression products; as well as methods and instrumentation for the sequencing of genomes, quantification of nucleic acid molecules, detection of single nucleotide polymorphisms (SNPs), and genetic modifications. Much of the value associated with the commercial use of these technologies involves nucleic acid-based diagnostics, potential gene therapy applications, and the development of new DNA- and RNA-based therapeutics.

Background

Among the benefits derived from PHS-conducted and -supported biomedical research are effective and accessible new healthcare treatments and services. Practical realization of these benefits depends on the ability and willingness of private sector partners to develop and commercialize new technologies arising from PHS conducted and funded research. For potential preventive, diagnostic, and therapeutic products, the interest of the private sector in commercializing new technologies often depends on the existence of patent protection on the technology in the United States and foreign countries.

The Bayh-Dole Act of 1980 allows PHS grantees and contractors to seek patent protection on subject inventions made using Government funds and to license those inventions with the goal of promoting their utilization, commercialization, and public availability. Recipients of PHS grants and contracts have a role in implementing the requirements of the Bayh-Dole Act (*http://s-edison.info.nih.gov/iEdison/www.iedison.gov*). In 1986, Federal laboratories, including PHS research laboratories at the National Institutes of Health (NIH), the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC), were given a statutory mandate under the Federal Technology Transfer Act (Pub. L. 99–502) and Executive Order 12591 to ensure that new technologies developed in those laboratories were transferred to the private sector and commercialized.

PHS recognizes that patenting and licensing genomic inventions presents formidable challenges for academic and government technology transfer programs because of the complexities in bringing these technologies to the marketplace in a way that balances the expansion of knowledge and direct public health benefit with the commercial needs of private interests.

The following represents best practices recommendations to the intramural PHS technology transfer community as well as to universities, hospitals and other non-profit PHS funding recipients. These recommendations are not intended to constitute additional regulations, guidelines or conditions of award for any contract or grant, although they are consistent with existing policies set out in Sharing Biomedical Research Resources (*http://ott.od.nih.gov/NewPages/RTguide_final.html*) and Developing Sponsored Research Agreements (*http://ott.od.nih.gov/NewPages/text-com.htm*).

Patent Protection

Like other emerging technology areas, patents directed to genomic inventions tend to issue with claims that are broad in scope. Public health-oriented technology transfer must balance the rewards of broad intellectual property protection afforded to founders of enabling genomic inventions with the benefits of fostering opportunities for those striving to improve upon those innovations.

Therefore, in considering whether to seek patent protection on genomic inventions, institutional officials should consider whether significant further research and development by the private sector is required to bring the invention to practical and commercial application. Intellectual property protection should be sought when it is clear that private sector investment will be necessary to develop and make the invention widely available. By contrast, when significant further research and development investment is not required, such as with many research material and research tool technologies, best practices dictate that patent protection rarely should be sought.

Best Licensing Practices

The optimal strategy to transfer and commercialize many genomic inventions is not always apparent at early stages of technology development. As an initial step in these instances, it may be prudent to protect the intellectual property rights to the invention. As definitive commercial pathways unfold, those embodiments of an invention requiring exclusive licensing as an incentive for commercial development of products or services can be distinguished from those that would best be disseminated non-exclusively in the marketplace.

Whenever possible, non-exclusive licensing should be pursued as a best practice. A non-exclusive licensing approach favors and facilitates making broad enabling technologies and research uses of inventions widely available and accessible to the scientific community. When a genomic invention represents a component part or background to a commercial development, non-exclusive freedom-to-operate licensing may provide an appropriate and sufficient complement to existing exclusive intellectual property rights.

In those cases where exclusive licensing is necessary to encourage research and development by private partners, best practices dictate that exclusive licenses should be appropriately tailored to ensure expeditious development of as many aspects of the technology as possible. Specific indications, fields of use, and territories should be limited to be commensurate with the abilities and commitment of licensees to bring the technology to market expeditiously.

For example, patent claims to gene sequences could be licensed exclusively in a limited field of use drawn to development of antisense molecules in therapeutic protocols. Independent of such exclusive consideration, the same intellectual property rights could be licensed non-exclusively for diagnostic testing or as a research probe to study gene expression under varying physiological conditions.

License agreements should be written with developmental milestones and benchmarks to ensure that the technology is fully developed by the licensee. The timely completion of milestones and benchmarks should be monitored and enforced. Best practices provide for modification or termination of licenses when progress toward commercialization is inadequate. Negotiated sublicensing terms and provisions optimally permit fair and appropriate participation of additional parties in the technology development process.

Funding recipients and the intramural technology transfer community may find these recommendations helpful in achieving the universal goal of ensuring that public health consequences are considered when negotiating licenses for genomic technologies.

PHS encourages licensing policies and strategies that maximize access, as well as commercial and research utilization of the technology to benefit the public health. For this reason, PHS believes that it is important for funding recipients and the intramural technology transfer community to reserve in their license agreements the right to use the licensed technologies for their own research and educational uses, and to allow other non-profit institutions to do the same.

Conclusion

PHS recognizes that these recommendations generally reflect practices that may already be followed by most funding recipients and the intramural technology transfer community with regard to licensing of genomic and other technologies. PHS also acknowledges the need for flexibility in the licensing negotiation process as the requirements of individual license negotiations may vary and may not always be adaptable to these best practices.

Dated: November 14, 2004.

Mark L. Rohrbaugh,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–25671 Filed 11–18–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Apoptosis in Liver Cells.

Date: December 14, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Is38oz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25668 Filed 11–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mortality and Fecundity in Two-sided Search for Male.

Date: December 1, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892 (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and

Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25670 Filed 11–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 10, 2004, 10 a.m. to November 10, 2004, 4 p.m., Sofitel Lafayette Square Hotel, 806 15th Street, NW., Washington, DC 20005 which was published in the **Federal Register** on November 3, 2004, 69 FR 64078–64081.

The meeting will be held December 3, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: November 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25669 Filed 11–18–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Annual User Fee for Customs Broker Permit and National Permit: General Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of due date for Customs broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by January 21, 2005. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Management Branch, (202) 344–2580.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No. 187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2005, the due date of the user fee is January 21, 2005. It is expected that the annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: November 9, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–25737 Filed 11–18–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice of emergency clearance request and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted a request for emergency processing of two information collection requests to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501, *et seq.*). FEMA is requesting OMB to review and approve the requests by December 1, 2004. The two information collection requests propose revisions to currently approved collections under OMB control numbers 1660–0071 and 1660–0072, which are used by grantees to apply for and report on eGrant awards and by FEMA to evaluate, award, and monitor expenditures and program/project performance for Pre-Disaster Mitigation (PDM) and the Flood Mitigation Assistant (FMA) program activities.

SUPPLEMENTARY INFORMATION: The proposed information collection requests, upon approval by OMB, will enable FEMA to open the FY 2005 eGrant application periods for the Pre-Disaster Mitigation (PDM) program and the Flood Mitigation Assistance (FMA) program, which are essential to FEMA's mission to lead America to prepare for prevent, respond to, and recover from disasters. The PDM grant program is the only source of Federal pre-disaster funding available to States and local governments for hazard mitigation. Hazard mitigation is an ongoing effort to lessen the impact disasters have on people's lives and property through damage prevention measures such as removing homes from the floodplain, engineering buildings and infrastructure to withstand earthquakes, installing safe rooms and retrofitting buildings to withstand high winds from tornadoes or hurricanes. The Disaster Mitigation Act of 2000 (Pub. L. 106–390) authorizes and funded the Pre-Disaster Mitigation (PDM) program to provide a continuous source of pre-disaster mitigation funding independent of disaster declarations to assist States and local communities to take actions to reduce the overall risks to populations and to properties from future disasters. The Flood Mitigation Assistance (FMA) program is an annual program targeted toward reducing flood damages and risks to people and properties. The National Flood Insurance Act of 2004 (Pub. L. 108–264) amended the FMA program by expanding the authorized funds from $20 million to $40 million annually to reduce the risk of floods to the nation's insured properties. Based on comments received from the FY 2003 PDM grant applicants, sub-grant applicants, and participants in the program evaluation and grant award process, FEMA has revised the eGrant application to solicit information that is more relevant to the evaluation of competitive applications for PDM and the evaluation of mitigation proposals in general for both the FMA and PDM programs.

In addition to program specific changes to the sub-grant application for PDM and FMA eGrants, the information collection requests have been revised to include as part of the eGrant quarterly and final reporting requirement, the financial and performance status reports, outlay reports, property management reports, and closeout reports required of each grant awarded. FEMA encourages the use of the PDM and FMA eGrants application described in this notice; however, applicants may also use the Agency's grant administration paper-based forms currently under OMB control number 1660–0025 to apply.

Information Collection Requests

1. Pre-Disaster Mitigation Program

Title: Pre-Disaster Mitigation (PDM) Program eGrants.

OMB Number: 1660–0071.

Abstract: FEMA uses the PDM program eGrant application, evaluation, and award process to provide Federal grant assistance to grantees (State and federally recognized tribal government) who administer grant awards for sub-grantee applicants (State-level agencies, federally recognized Indian tribal governments, local governments, public colleges and universities, tribal colleges and universities, and regional planning districts and councils of governments). Private-non-profit (PNP) organizations and private colleges and universities are not eligible sub-applicants; however, a relevant State agency or local government may apply to the grant applicant for assistance on their behalf. The grant assistance must be used to develop mitigation plans in accordance with section 322 of the Disaster Mitigation Act of 2000 to implement pre-disaster mitigation projects that reduce the risks of natural and technological hazards on life and property, and to provide information and technical assistance on cost-effective mitigation activities.

Affected Public: The category of affected public includes State, local and tribal governments.

Number of Responses: 1,176 (Grantees (applicants)—56 States and territories and sub-grantees (sub-applicants)—20 per State or territory.) Sub-applicants submit their eGrant applications to the States to review, coordinate and forward PDM grant applications to FEMA for approval.

Estimated Time per Respondent: FEMA has estimated the burden associated with this information collection request as follows:

Pre-Disaster Mitigation (PDM) Program eGrants—Grant Supplemental Information—Sub-grant applications.

- Benefit Cost Determination—5 hours per response.
- Environmental Review—7.5 hours per response.
- Project Narrative (including PDM Evaluation Information Questions)—12 hours per response.

Estimated Total Annual Burden Hours: 50,887.

Frequency of Response: On occasion and quarterly.

2. Flood Mitigation Assistance Program

Title: Flood Mitigation Assistance (FMA) Program eGrants.

OMB Number: 1660–0072.

Abstract: FEMA uses the FMA program eGrant application, evaluation, and award process to provide Federal grant assistance to grantees for three types of grants—Planning, Project, and Technical Assistance. FMA Planning Grants are available to States, National Flood Insurance Program (NFIP) participating communities, and Indian tribal governments to prepare Flood Mitigation Plans. FMA Project Grants are available to States, NFIP participating communities, and Indian tribal governments to implement measures to reduce flood losses. Ten percent of the Project Grant is made available to States, NFIP participating communities, Indian tribal governments, and communities in non-participating States as a Technical Assistance Grant. The National Flood Insurance Reform Act (42 U.S.C. 1366), as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, (Pub. L. 108–264) authorizes the Flood Mitigation Assistance program. The FMA program is designed to award grants to States, NFIP participating communities, and Indian tribal governments so that measures can be taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the National Flood Insurance Program.

FEMA encourages the use of the PDM and FMA eGrants application described in this notice; however, applicants may also use the Agency's grant administration paper-based forms currently under OMB control number 1660–0025 to apply.

Affected Public: The category of affected public includes State, local and tribal governments and not-for-profit institutions.

Number of Responses: 280.

Estimated Time per Respondent: FEMA has estimated the burden associated with this information collection request as follows:

Flood Mitigation Assistance (FMA) Program eGrants—Grant Supplemental Information—Sub-grant applications.

- Benefit Cost Determination—5 hours per response.
- Environmental Review—7.5 hours per response.
- Project Narrative—12 hours per response.

Estimated Total Annual Burden Hours: 4,088.

Frequency of Response: On occasion and quarterly.

Comments: Interested persons are invited to submit written comments on the proposed information collection requests to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Homeland Security/FEMA at the following e-mail address *Michael_A._Sauers@omb.eop.gov* or facsimile number (202) 395–7285. We ask that you submit comments not later than December 1, 2004, to ensure consideration of your comments before OMB evaluates and acts on these requests.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection requests should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 12, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–25660 Filed 11–18–04; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1564–DR]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: November 10, 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 New York 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 1, 2004: Chautauqua 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. 04–25661 Filed 11–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1568–DR]

Tennessee; 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 Tennessee (FEMA–1568–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: November 10, 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 Tennessee 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:

Giles 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. 04–25662 Filed 11–18–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2273–03]

Direct Mail Program for Submitting Form I–485, Application To Register Permanent Resident or Adjust Status; Form I–765, Application for Employment Authorization; and Form I–131, Application for Travel Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is expanding its Direct Mail Program to provide that certain filings of Form I–485, Application to Register Permanent Residence or Adjust Status; Form I–765, Application for Employment Authorization; and Form I–131, Application for Travel Document, be filed at a designated Chicago, Illinois lockbox facility for initial processing. The Direct Mail Program allows USCIS to more efficiently process applications through standardization, by eliminating duplicative work, maximizing staff productivity, and introducing better information management tools. USCIS intends for this Direct Mail rollout to be completed in a two-phased approach. Phase One will begin on December 1, 2004 and will affect certain aliens filing Form I–485, Form I–765, and Form I–131 who live in the states of Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, as well as the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States. Phase Two will begin on April 1, 2005 and will affect certain aliens filing Form I–485, Form I–765, and Form I–131 residing in: Alaska, California, Idaho, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Texas, and Washington.

DATES: This notice is effective December 1, 2004.

FOR FURTHER INFORMATION CONTACT: S. Rebecca Watson, Lockbox Project Manager, U. S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Room 1000, Washington, DC 20529, Telephone (202) 272–1001.

SUPPLEMENTARY INFORMATION:

Background

What is the Direct Mail program?

The purpose and strategy of the Direct Mail program have been discussed in detail in previous rulemaking and notices (*see* 59 FR 33903, 59 FR 33985, 60 FR 22408, 61 FR 2266, 61 FR 56060, 62 FR 16607, 63 FR 891, 63 FR 892, 63 FR 13434, 63 FR 13878, 63 FR 16828, 63 FR 50584, 63 FR 8688, 63 FR 8689, 64 FR 67323, 69 FR 3380, and 69 FR 4210).

Explanation of Changes

Does this notice make any changes relating to an alien's eligibility for adjustment of status, related employment authorization, or related travel authorization?

No. This notice affects only the address location where certain filings involving an adjustment of status application, employment authorization and travel authorization requests are to be mailed. These forms, previously filed at several locations nation-wide, will now be filed under the Direct Mail Program at one specific address in Chicago, IL.

Where may I find information related to eligibility requirements for Adjustment of Status applications?

Interested individuals may find eligibility requirements for all applications related to Adjustment of Status, Employment Authorization, and Travel Authorization at the USCIS Web site: *http://www.uscis.gov*.

Which aliens applying for adjustment of status does this notice affect?

This notice affects aliens residing in the United States who are filing Form I–485 under the following categories:

- Aliens who are immediate relatives of a U.S. citizen, as defined by section 201(b) of the Act, and are filing based upon an approved, concurrently filed, or pending Form I–130, Petition for Alien Relative;
- Aliens who are widow/widowers of a U.S. citizen, as described by section 201(b) of the Act;
- Aliens described by section 203(a) of the Act as the qualifying relative of a U.S. citizen or lawful permanent resident alien, and are filing based on an approved Form I–130;
- Aliens described by section 203(d) of the Act as the derivative relatives of aliens described by section 203(a) of the Act;
- Aliens described by section 101(a)(15)(K) of the Act as the fiancé(e) of a U.S. citizen or the minor child(ren) of such fiancé(e), and are filing based on an approved Form I–129F, Petition for Alien Fiancé(e);
- Aliens eligible for registry under section 249 of the Act;
- Aliens eligible under the Cuban Adjustment Act of November 2, 1965;
- Aliens described as special immigrants under sections 101(a)(27)(J), (K), and (I) of the Act;
- Aliens described as Amerasians under section 204(f) of the Act;
- Aliens who are beneficiaries of an approved Form I–360 as a battered spouse or child;
- Aliens who are beneficiaries of Private Bills;
- Aliens who are winners of the Diversity Visa lottery;
- Aliens from certain former Soviet and Southeast Asian countries who were paroled into the United States as public interest parolees and are eligible to adjust under Public Law 101–167, ''the Lautenberg Amendment;''
- Aliens eligible under section 646 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA);
- Aliens eligible under section 13 of the Act of September 11, 1957; and
- Aliens eligible for creation of record under section 102 of the Act.

Which aliens applying for employment authorization will this notice affect?

USCIS is refining the processing of Form I–765 by requiring certain aliens to send their application packages, including all supporting evidence, to the Chicago lockbox facility. This Notice affects aliens residing in the United States, who are filing Form I–765, seeking employment authorization under 8 CFR 274a.12 in the following categories:

- (a)(10)—Aliens granted Withholding of Removal;
- (c)(9)—Aliens filing a family-based application for adjustment of status (Form I–485) who are presently required to file with the USCIS local office having jurisdiction over their place of residence;
- (c)(10)—Aliens granted Suspension of Deportation who are required to file with the USCIS Service Center having jurisdiction;
- (c)(11)—Aliens who are paroled into the United States temporarily for emergency reasons or the public interest;
- (c)(14)—Aliens granted deferred action;
- (c)(16)—Aliens who are filing for creation of record of lawful admission for permanent residence under section 249 of the Act; and
- (c)(18)—Aliens granted an Order of Supervision;

Which aliens applying for travel authorization will this notice affect?

USCIS is refining the processing of Form I–131 by requiring aliens seeking Advance Parole to send their application packages to the Chicago Lockbox facility. Part 2 of Form I–131 lists various application types for an alien to obtain a travel document. Only aliens who apply for an *Advance Parole Document* and fit the categories and criteria stated in this Notice must submit their Form I–131, and all supporting evidence, to the Chicago Lockbox facility.

To what address should aliens filing affected Form I–485, Form I–765, and Form I–131 send their application packages?

Effective December 1, 2004, those aliens described in Phase One as established by this Notice, and effective April 1, 2005, those aliens described in Phase Two, as established by this Notice, must send their Form I–485, and/or Form I–765, and/or Form I–131, and all supporting documentation for each application, directly to one of the following addresses: U. S. Citizenship and Immigration Services, P.O. Box 805887, Chicago, IL 60680–4120; or For non-United States Postal Service (USPS) deliveries (*e.g.* private couriers): U. S. Citizenship and Immigration Services, 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1098.

USCIS notes that the above lockbox addresses are different than the Chicago USCIS offices located on West Jackson Boulevard, S. Dearborn, or at 539 S. La Salle.

Will the instructions to the Form I–485, Form I–765, and Form I–131 be changed?

USCIS is currently amending the instructions to Form I–485, Form I–765, and Form I–131, as well as the procedures listed on the USCIS website to reflect the new filing address. With the exception of the new filing address, all other filing procedures remain unchanged.

Does this notice affect the 90-day requirement to adjudicate the employment authorization application?

No. This Direct Mail Notice does not change the regulations contained in 8 CFR 274a.13(d).

What will happen to Form I–485, Form I–765, and Form I–131 covered by this notice that are filed at other USCIS locations?

During the first 30 days following the effective date of this notice, other USCIS offices will forward to the Chicago Lockbox address any filings of Form I–485, Form I–765, and Form I–131 they receive that are covered by this Notice. Applications forwarded from the other USCIS offices will be considered properly filed when receipted at the Lockbox.

After the 30-day transition period, any application-type mentioned in this Notice, received at a location other than the Lockbox address will be returned with an explanation directing the applicant to mail the application directly to the Chicago Lockbox address for processing.

Dated: November 16, 2004.

Eduardo Aguirre,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 04–25679 Filed 11–18–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–47]

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 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, 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: November 10, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–25436 Filed 11–18–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held December 14 & 15, 2004 at the BLM's Lewistown Field Office on Airport Road in Lewistown, Montana.

The December 14 meeting will begin at 1 p.m. with a 60-minute public comment period. The meeting is scheduled to adjourn at approximately 6 p.m.

The December 15 meeting will begin at 8 a.m. with a 30-minute public comment period. This meeting will also adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At this meeting the council will discuss:

New Member Orientation;
Field Manager Updates;
Public Meetings Concerning 12 Natural Gas Leases Within the Monument;
The Preparation Plans for the West HiLine Resource Management Plan
Recreation Statistics for the Upper Missouri National Wild and Scenic River;
Non-Consensus Items for the Monument Resource Management Plan;
Recommendations for Travel Management Within the Monument

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the timer for individual oral comments may be limited.

FOR FURTHER INFORMATON CONTACT: Chuck Otto, Acting Lewistown Field Manager, Lewistown Field Office, Airport Road, Lewistown, Montana 59457, (406) 538–7461.

Dated: November 15, 2004.

Chuck Otto,

Acting Lewistown Field Manager.

[FR Doc. 04–25781 Filed 11–18–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–05–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat representing the dependent resurvey and survey in Township 2 North, Range 6 West, and subdivision of sections, accepted September 30, 2004, for Group 1005 New Mexico.

The Supplemental Plat was prepared to renumber the lots in sections 6, 7&18 for Township 21 South, Range 1 West and Range 1 East, accepted August 17, 2004, New Mexico.

The Supplemental Plat showing new lots 10 and 11, created from former lot of 5 section 18, Township 23 North, Range 6 West, accepted September 7, 2004, New Mexico.

The plat representing the dependent resurvey and survey of subdivision sections for Township 8 North, Range 7 West, accepted September 9, 2004 for Group 1010 New Mexico.

The plat, in 2 sheets, representing the dependent resurvey and survey of a portion of the Second Standard Parallel North through Range 6 West (north boundary, for sections 2, 4 and 6 Township 8 North, Range 6 West, accepted September 9, 2004 for Group 1010 New Mexico.

The plat representing the dependent resurvey of a portion of the north boundary of the Santo Domingo de Cundiyo Grant, Township 20 North, Range 10 East, accepted on September 10, 2004 for Group 1006 New Mexico.

The plat representing the dependent resurvey of a portion of the south boundary of the Santa Cruz Grant and a portion of the subdivisional lines, Township 20 North, Range 9 East, accepted on September 10, 2004 for Group 1021 New Mexico.

The plat representing the dependent resurvey of a portion of the boundary between the Sebastian Martin Grant and the Black Mesa Grant, accepted September 21, 2004 for Group 1015 New Mexico.

Indian Meridian, Oklahoma

The plat, in 4 sheets, representing the dependent resurvey and survey of a portion of the north boundary of the Cheyenne and Arapaho Reservation, sections 26, 35 and 36 of Township 20 North, Range 10 West, accepted September 7, 2004, for Group 52 Oklahoma.

The plat, in 2 sheets, representing the dependent resurvey and survey of the subdivisional lines, and the adjusted record meanders of the 1873 right bank of the Cimarron River, section 2 of Township 19 North, Range 10 West, accepted September 7, 2004, for Group 52 Oklahoma.

The plat, in 2 sheets, representing the dependent resurvey and survey of portions of the west and north boundaries, a portion of the subdivisional lines, and the adjusted record meanders of the 1873 right and left banks of the Cimarron River for sections 6 and 7, for Township 19 North, Range 9 West, accepted September 7, 2004, for Group 52 Oklahoma.

The plat representing the dependent resurvey of the portion of the North boundary, a portion of the subdivisional lines, and a portion of the subdivision of section lines, and the subdivision of certain sections. Township 29 North, Range 23 East, accepted September 30, 2004 for Group 94 Oklahoma.

The plat representing the dependent resurvey of the Seventh Standard Parallel North, the east boundary, a portion of the north boundary, and portions of the subdivisional lines and the subdivision of certain sections, Township 29 North, Range 22 East, accepted September 30, 2004 for Group 94 Oklahoma.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 27, 2004.

Robert Casias,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 04–25724 Filed 11–18–04; 8:45 am]

BILLING CODE 4310–FB–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 30, 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 Street, NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye Street, NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by December 6, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Georgia

Bryan County

Pembroke Historic District, Centered on U.S. 280 and Main St., Pembroke, 04001318

Wilkes County

Washington Historic District, Centered on West Robert Toombs Ave. and N. Alexander St., Washington, 04001319

Illinois

Cook County

Burnham, Anita Willets, Log House, 1140 Willow Rd., Winnetka, 04001297

Chicago and North Western Railway Power House, 211 N. Clinton St., Chicago, 04001306

Oak Park Conservatory, 615 Garfield St., Oak Park, 04001298

University Apartments, 1401 and 1451 E. 55th St.;1401 and 1450 E. 55th Place, Chicago, 04001301

Du Page County

Bassett, Orland P., House, 329 E. Sixth St., Hinsdale, 04001299

Kane County

Hotel Arthur, 2–4 N. Broadway, Aurora, 04001300

Ogle County

Polo Independent Order of Odd Fellows Lodge No. 197, 117 W. Mason St., Polo, 04001302

Peoria County

Springdale Cemetery, 3014 N. Prospect Rd., Peoria, 04001303

Tazewell County

St. Louis, Peoria and Northern Railroad Depot, 1408 Broadway St., Pekin, 04001305

Winnebago County

Seventh Street Commercial Historic District, Roughly bounded by 7th St., Charles St., 6th St., Keith Creek, Rockford, 04001304

Indiana

Allen County

Byron, Irene, Tuberculosis Sanatorium—Physicians' Residences, 12371 and 12407 Lima Rd., Fort Wayne, 04001316

Rankin, Alexander Taylor, House, 818 S. Lafayette St., Fort Wayne, 04001317

Benton County

Fowler Theatre, 111 E. 5th St., Fowler, 04001315

Cass County

Keip, John, House, 2500 E. Broadway Ave., Logansport, 04001307

Delaware County

Richwood Evangelical Lutheran Church, 9700 West County Road 700 South, Middleton, 04001314

Huntington County

Victory Noll—St. Felix Friary Historic District, 1900 W. Park Dr.—1280 Hitzfield St., Huntington, 04001311

Jay County

Votaw, Jonas, House, 1525 S. Meridian St., Portland, 04001308

Marion County

Bingham, Joseph J., Indianapolis Public School #84 (Public School Buildings in Indianapolis Built Before 1940 MPS), 440 E. 57th St.—5702 Central Ave., Indianapolis, 04001310

Brendonwood Historic District, Roughly bounded by Fall Creek, 56th St., and Brendon Forest Dr., Indianapolis, 04001313

Ralph Waldo Emerson Indianapolis Public School #58 (Public School Buildings in Indianapolis Built Before 1940 MPS) 321 N. Linwood St., Indianapolis, 04001309

Wheeler—Stokely Mansion, 3200 Cold Spring Rd., Indianapolis, 04001312

Iowa

Clay County

Grand Avenue Historic Commercial District, 301–605 Grand Ave., 12–18, 21 W. 5th St., 10,13,15–19 W. 4th St., Spencer, 04001322

Clinton County

Wilson District #7 School, 1507 270th Ave., Delmar, 04001320

Lee County

Melrose Historic District (Iowa City, Iowa MPS AD), Portions of Melrose Ave., Melrose Ct., Melrose Circle, Brookland Park Dr., Brookland Place and Myrtle Ave., Iowa City, 04001321

Linn County

Ausadie Building, 845 First Ave., SE., Cedar Rapids, 04001324

Polk County

Herring Motor Car Company Building, 110 W. 10th St., Des Moines, 04001325
Standard Glass and Paint Company Building, 112 10th St., Des Moines, 04001323

Louisiana

Orleans Parish

Southern Railway Freight Office, 1201 St. Louis St., New Orleans, 04001338

New Hampshire

Merrimack County

Allenstown Meeting House, Deerfield Rd., Allenstown, 04001327

New York

Columbia County

Dubois, Henry A., and Evanlina, House, 105 Ten Broeck Ln., Hudson, 04001340

Delaware County

Hotel Delaware, 391 Main St., East Branch, 04001342
Union Free School, 218 NY 206, Downsville, 04001345

Dutchess County

Beacon Engine Company No. 1 Firehouse, 57 E. Main St., Beacon, 04001341

Genesee County

First Presbyterian Church, 300 E. Main St., Batavia, 04001339

Livingston County

National Hotel, 2927 Main St., Cuylerville, 04001344

New York County

Schickel, William, House, 52 E. 83rd St., New York, 04001326

St. Lawrence County

Clare Town Hall, 3441 CR 27, Clare, 04001343

Oklahoma

Adair County

Bushyhead, Rev. Jesse, Grave, (Cherokee Trail of Tears MPS) OK 59, Westville, 04001334

Alfalfa County

Cherokee Friends Church, 120 S. Pennsylvania, Cherokee, 04001337

Carter County

Ardmore Historic Commercial District (Boundary Increase and Decrease), Main St. from Santa Fe RR tracks to ''B'' St., N. Washington from Main to 2nd Ave. NE, Caddo from Main to 2nd Ave. NE, Ardmore, 04001331

Cherokee County

Illinois Campground, (Cherokee Trail of Tears MPS) Cty Rd. DO775, Tahlequah, 04001330

Garfield County

Kenwood Historic District, Bounded by Oak St., Maple, Washington and Madison, Enid, 04001328

Garvin County

Antioch Dependent School District #15, 0.5 mi. W of jct of Antioch Rd. and OK 74, Elmore City, 04001333

Harper County

Patsy's Island Site, Address Restricted, Woodward, 04001335
Smith No. 2 Site, Address Restricted, Woodward, 04001329

Payne County

Campus Fire Station, 600 W. University Ave., Stillwater, 04001336

Tulsa County

Phillips 66 Station #473, 2224 E. Admiral Blvd., Tulsa, 04001332

A request for REMOVAL has been made for the following nominations:

Minnesota

Goodhue County

Nelson, Julia B., House, 219 5th St., Red Wing, 79001244

Steele County

Clinton Fells Mill and Dam, Off Co. Hwy. 9, Medford vicinity, 86001462

[FR Doc. 04–25654 Filed 11–18–04; 8:45 am]

BILLING CODE 4312–51–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 23, 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 Street, NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye Street, NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by December 6, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Arkansas

Izard County

Missouri Pacific Railroad Depot, (Historic Railroad Depots of Arkansas MPS), Old AR 9, Sylamore, 04001280.

Kansas

Riley County

Runyon, Damon House, 400 Osage St., Manhattan, 04001282.

Maine

Knox County

Strand Theatre, 345 Main St., Rockland, 04001284.

Lincoln County

Clary Mill, 104 Mills Rd., Whitefield, 04001283.

Minnesota

Winona County,

Watkins, J.R., Medical Company, 150 Liberty St., Winona, 04001296.

Missouri

Audrain County

Simmons, Arthur, Stables Historic District, 621 and 701 W. Blvd., Mexico, 04001286.

Cape Girardeau County

Warehouse Row Historic District (Cape Girardeau, Missouri MPS), 19 N. Water St., Cape Girardeau, 04001285.

St. Louis County

Pasadena Hills Historic District, Bounded by the city limits of Pasadena Hills, Pasadena Hills, 04001281.

North Carolina

Durham County

Poland, George, House, 500 John Jones Rd., Bahama, 04001287.

Ohio

Franklin County

Shiloh Baptist Church, 720 Mt. Vernon Ave., Columbus, 04001288.

Pennsylvania

Montgomery County

Lansdale Silk Hosiery Company—Interstate Hosiery Mills, Inc., 200 S. Line St., Lansdale, 04001289.

Texas

Walker County

State Highway 19 Bridge at Trinity River (Historic Bridges of Texas MPS), TX 19, on the Trinity/Walker county line, Riverside, 04001290.

Virginia

Charlottesville Independent City

Memorial Gymnasium, 210 S. Emmett St., Charlottesville (Independent City), 04001291.

Nelson County

Hamner House, 128 Treetop Loop, Schuyler, 04001293.

Richmond Independent City

Ginter Park Terrace Historic District (Streetcar Suburbs in Northside Richmond MPS), 3000 blks of Hawthorne, Noble, Moss Side, Montrose and Edgewood Aves., Richmond (Independent City), 04001292.

Highland Park Plaza Historic District, Roughly bounded by Meadowbridge Rd., Missouri Ave., City limits, and Detroit Ave., Richmond (Independent City), 04001294.

Suffolk Independent City

Suffolk Historic District (Boundary Increase III), Pinner and Central Ave. and W. Washington St., Suffolk (Independent City), 04001295.

[FR Doc. 04–25655 Filed 11–18–04; 8:45 am]

BILLING CODE 4312–51–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 November 6, 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 Street, NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye Street, NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by December 6, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Arizona

Pima County

St. Philip's in the Hills Episcopal Church, 4440 N. Campbell Ave., Tucson, 04001347

Colorado

Denver County

Park Hill, Bounded by Colorado Blvd., E. 26th Ave., Dahlia St., and E. Montview Blvd., Denver, 04001348

Georgia

Pulaski County

Hawkinsville Commercial and Industrial Historic District, Roughly bounded by Dooly, Broad, Houston, and 3rd Sts., Hawkinsville, 04001349

Iowa

Clinton County

Howes Building, 419–425 Second St. S., Clinton, 04001351

Davis County

Wishard, Henry, House, 406 W. Jefferson St., Bloomfield, 04001350

Woodbury County

Great Northern Railway Steam Locomotive No. 1355 and Tender 1451, 3400 Sioux River Rd., Sioux City, 04001352

Kansas

Douglas County

Black Jack Battlefield (Boundary Increase), US 56 and Cty Rd. 200, 3.0 mi. E. of Baldwin City, Baldwin, 04001373

Maryland

Montgomery County

Hammond Wood Historic District (Subdivisions and Architecture Planned and Designed by Charles M. Goodman Associates in Montgomery County, MD MPS), Veirs Mill Rd., Highview Ave., Pendleton Dr., College View Dr., Woodridge Ave., Silver Spring, 04001355

Rock Creek Woods Historic District, 11504, 11506 Connecticut Ave., 3600–3702 Spruell Dr., 3908–4020 Rickover Rd., 4004–4019 Ingersol Dr., Silver Spring, 04001354

Takoma Avenue Historic District (Subdivisions and Architecture Planned and Designed by Charles M. Goodman Associates in Montgomery County, MD MPS), 7906, 7908, 7910, 7912, 7914 Takoma Ave., Takoma Park, 04001353

Prince George's County

Hyattsville Historic District (Boundary Increase), Roughly bounded by B&O RR Tracks, East-West Hwy, 42nd Pl., Madison, 37th, 38th Ave., Hamilton, and 37th Pl., Hyattsville, 04001356

Minnesota

Big Stone County

Graceville Historical Marker (Federal Relief Construction in Minnesota MPS AD), MN 28, Graceville, 04001358

Wabasha County

Reads Landing Overlook (Federal Relief Construction in Minnesota MPS AD), MN 61, Pepin Township, 04001359

Montana

Lewis and Clark County

Montana Veterans and Pioneers Memoiral Building, 225 North Roberts, Helena, 04001357

South Dakota

Codington County

Schafer Farmstead, 15539 444th Ave., Florence, 04001361

Zech Farmstead, 16676 456th Ave., Watertown, 04001360

Hutchinson County

Freeman Junior College, 748 S. Main St., Freeman, 04001362

Jerauld County

Nielson, L.P., Barn, 23251 393rd Ave., Woonsocket, 04001363

Lincoln County

Brooklyn School District #42 (Schools in South Dakota MPS), 29534 468th Ave., Beresford, 04001364

Schmid, Mathias, Farm, 47405 293rd St., Beresford, 04001367

Pennington County

Black Hills Model Home, 2101 West Blvd., Rapid City, 04001366

Otho Mining District, 13380 Greyhound Gulch, Otho, 04001365

Vermont

Windsor County

West Hartford Village Historic District, VT 14, Harper Savage Ln., Tigertown Rd., and Stetson Rd., Hartford, 04001368

Virginia

Richmond Independent City

Oakwood-Chimborazo Historic District, Roughly N. 30th–N. 39th St., Chimborazo, Meldon, Oakwood, E. Broad, Briel, E. Clay, E. Leigh, M, E. Marshall, N, O, and P, Richmond (Independent City), 04001372

Washington

Skagit County

Wilson Hotel, 804 Commercial Ave., Anacortes, 04001369

Whatcom County

Barlow Building (Commercial Buildings of the Central Business District of Bellingham, Washington MPS), 211 W. Holly St., Bellingham, 04001371

Daylight Building (Commercial Buildings of the Central Business District of Bellingham, Washington MPS), 1201–1213 N. State St., Bellingham, 04001370

A request for REMOVAL has been made for the following resources:

Kansas

Doniphan County

Eclipse School, Off US 36 NE of Troy, Troy vicinity, 88000200

Harding, Benjamin, House 308 N. 5th, Wathena, 77000578

Mission-Herring Barn (Byre and Bluff Barns of Doniphan County TR), US 36, Highland vicinity, 86003535

[FR Doc. 04–25656 Filed 11–18–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–486, Enforcement Proceedings]

In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Institution of Formal Enforcement Proceedings

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the remedial order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., telephone (202) 205–3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may 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–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 10, 2003, based on a complaint and motion for temporary relief filed on behalf of New Holland North America, Inc. (''complainant'') of New Holland, Pennsylvania. 68 FR 6772 (Feb. 10, 2003). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain tractors and components thereof by reason of infringement of New Holland's trade dress. The notice of investigation identified three respondents: Beiqi Futian Automobile Co., Ltd. (''Futian'') of Beijing, China; Cove Equipment, Inc. of Conyers Georgia; and Northwest Products, Inc. of Auburn, Washington.

On March 5, 2003, complainant moved pursuant to section 337(g) and Commission rule 210.16 for issuance of an order directing respondent Futian to show cause why it should not be found in default. On March 7, 2003, the presiding administrative law judge (''ALJ'') issued Order No. 4, which ordered Futian to show cause why it should not be found in default. Order No. 4 noted Futian's failure to respond to the complaint and notice of investigation or otherwise to acknowledge the existence of this proceeding. Futian did not respond to the order to show cause. On March 19, 2003, the ALJ issued an initial determination (''ID'') finding Futian in default pursuant to Commission rules 210.16(a) and (b), and ruling that it had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. On March 25, 2003, the Commission determined not to review that ID. On April 2, 2003, complainant filed a declaration pursuant to section 337(g)(1) and Commission rule 210.16(c)(1) seeking the immediate entry of permanent default relief against respondent Futian.

On May 2, 2003, after determining not to review an ID terminating the last respondent on the basis of a consent order, the Commission requested briefing on the issues of remedy, the public interest, and bonding as no respondents remained in the investigation. 68 FR 23497. Only the complainant and the Commission investigative attorney (''IA'') submitted briefs on the issues of remedy, the public interest, and bonding.

The complainant and the IA agreed that a limited exclusion order was appropriate and the Commission issued a limited exclusion order. The complainant also sought a cease and desist order against the foreign respondent Futian, but the Commission declined to draw an adverse inference of commercially significant inventories in the United States and did not issue a cease and desist order.

On August, 2, 2004, the complainant, now known as CNH America LLC, filed the instant petition for modification of the limited exclusion order and complaint seeking enforcement proceedings. The complainant asserts that Futian, now known as Beiqi Foton Motor Co., Ltd., continues to export infringing tractors to the United States. The complainant contends that Beiqi Foton Motor Co. has circumvented the limited exclusion order by renaming and remarking infringing tractors. Complainant also alleged that Shandong Worldbest Shantou Co. (Shandong) is related to Futian, and therefore subject to the limited exclusion order. Complainant also requested that the Commission modify the limited exclusion order by replacing it with a general exclusion order and various cease and desist orders in order to prevent alleged circumvention of the limited exclusion order.

The Commission, having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission Rule 210.75, determined to institute formal enforcement proceedings to determine whether Beiqi Foton Motor Co. Ltd. and Shandong are in violation of the Commission's limited exclusion order issued in the investigation, and what if any enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant CNH America LLC; (2) respondent Beiqi Foton Motor Co. Ltd.; (3) respondent Shandong Worldbest Shantou Co., Ltd., and (4) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

Having examined the petition for modification proceedings filed by CNH America LLC, and having found that the request does not comply with the requirements for institution of modification proceedings described in Commission Rule 210.76, in that the complaint provides no argument concerning the legal basis for the broad modification sought, the Commission has denied the petition for modification proceedings.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: November 15, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25659 Filed 11–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–513]

In the Matter of Certain Electronic Devices, Including Power Adapters, Power Converters, External Batteries, and Detachable Tips, Used to Power and/or Charge Mobile Electronic Products, and Components Thereof; Notice of a Commission Determination Not to Review an Initial Determination Granting a Motion To Withdraw the Complaint and Terminate the Investigation; Termination of Investigation

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'') granting a motion to withdraw the complaint and terminate the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID 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, which concerns allegations of unfair acts in violation of section 337 in the importation and sale of certain electronic devices, including power adapters, power converters, external batteries and detachable tips, used to power and/or charge mobile electronic products, and components thereof on June 14, 2004, based on a complaint filed by Mobility Electronics, Inc., of Scottsdale, Arizona (''Mobility''). 69 FR 33069 (June 14, 2004). The respondents named in the notice of investigation were Formosa Electronics Industries, Inc., of Hsin-Tien City, Taipei Hsien, Taiwan; Micro Innovations, Inc., Edison, New Jersey; and SPS, Inc., Republic of Korea. Mobility's complaint alleged that respondents' products infringed claims of 4 different patents held by Mobility.

On September 28, 2004, the presiding ALJ issued an ID (Order No. 5) granting a joint motion of Mobility and SPS, Inc. to terminate the investigation as to SPS, Inc. on the basis of a settlement agreement. On October 20, 2004, the Commission determined not to review Order No. 5.

On October 22, 2004, complainant Mobility filed a motion pursuant to Commission rule 210.21(a) (19 CFR 210.21(a)) to terminate the investigation on the basis of withdrawal of the complaint. On November 1, 2004, the presiding ALJ issued the subject ID (Order No. 8) granting Mobility's motion to terminate the investigation.

No party filed a petition for review of the subject 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 16, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25735 Filed 11–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–526]

In the Matter of Certain NAND Flash Memory Circuits and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 15, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SanDisk Corporation. A supplement to the Complaint was filed on October 29, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain NAND flash memory circuits and products containing same by reason of infringement of claims 27, 28, and 32 of U.S. Patent No. 5,172,338. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. 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 at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 10, 2004, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain NAND flash memory circuits and products containing same by reason of infringement of one or more of claims 27, 28, and 32 of U.S. Patent No. 5,172,338, and whether an industry in

the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SanDisk Corporation, 140 Caspian Court, Sunnyvale, California 94089.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

STMicroelectronics N.V., 39, Chemin du Champ des Filles, C.P. 21, CH 1228 Plan-Les-Ouates, Geneva, Switzerland.

STMicroelectronics, Inc., 1310 Electronics Drive M/S 2308, Carrollton, Texas 75006.

(3) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 15, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25657 Filed 11–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Second Review)]

Natural Bristle Paint Brushes From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on May 3, 2004 (69 FR 24191) and determined on August 6, 2004 that it would conduct an expedited review (69 FR 51474, August 19, 2004).

The Commission transmitted its determination in this review to the Secretary of Commerce on November 9, 2004. The views of the Commission are contained in USITC Publication No. 3733 (November 2004), entitled Natural Bristle Paint Brushes from China: Investigation No. 731–TA–244 (Second Review).

Issued: November 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25733 Filed 11–18–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–031]

Government in the Sunshine Act Meeting Notice

AGENCY: United States International Trade Commission.

TIME AND DATE: December 10, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1058 (Final) (Wooden Bedroom Furniture from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 22, 2004.)
5. Inv. Nos. 701–TA–437 and 731–TA–1060 and 1061 (Final) (Carbazole Violet Pigment 23 from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before December 22, 2004.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 15, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25800 Filed 11–17–04; 11:44 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women

[OJP (OVW) Docket No. 1413]

Notice of Meeting

AGENCY: Office on Violence Against Women, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter ''the Committee'').

DATES: The meeting will take place on December 7, 2004, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Jana Sinclair White, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DC 20531; by telephone at: (202) 353–4343; e-mail: *Jana.S.White@usdoj.gov;* or fax: (202) 307–3911. You may also view the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html.*

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws. The Committee also assists in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking. Because violence against women is increasingly recognized as a public health problem of staggering human cost, the Committee brings national attention to the problem to increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on the Committee's work; there will, however, be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws.

Schedule: This meeting will be held on December 7, 2004, from 8:30 a.m. until 4 p.m., and will include breaks and a working lunch. The meeting will begin with consideration of the draft report prepared by the drafting subcommittee of the Committee. Time will be reserved for public comment beginning at 11:30 a.m. and ending at 12 p.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space-available basis is required. Persons who wish to attend must register at least six (6) days in advance of the meeting by contacting Jana Sinclair White by e-mail at: *Jana.S.White@usdoj.gov;* or fax: (202) 307–3911. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

The meeting site is accessible to individuals with disabilities. Individuals who require special accommodations in order to attend the meeting should notify Jana Sinclair White by e-mail at: *Jana.S.White@usdoj.gov;* or fax at: (202) 307–3911, no later than November 30, 2004. After this date, we will attempt to satisfy accommodation requests, but cannot guarantee the availability of any requests.

Written Comments: Interested parties are invited to submit written comments by November 30, 2004, to Jana Sinclair White at The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Comments may also be submitted by e-mail at *Jana.S.White@usdoj.gov;* or fax at (202) 307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will discuss the implementation of the Violence Against Women Act of 1994 and the Violence Against Women Act of 2000, are requested to reserve time on the agenda by contacting Jana Sinclair White by e-mail at *Jana.S.White@usdoj.gov;* or fax at (202) 307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the issue. Each participant will be permitted approximately 3 to 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at the meeting site or may be mailed to the Committee at 810 Seventh Street, NW., Washington, DC 20531.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 04–25736 Filed 11–18–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Nilvio R. Aquino, M.D. Revocation of Registration

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nilvio R. Aquino, M.D. (Dr. Aquino) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AA1153991, under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration under 21 U.S.C. 823(f).

The Order to Show Cause alleged in relevant part, that Dr. Aquino's medical license in Florida had been revoked after he was convicted of a crime directly relating to the practice of medicine and that he did not currently have a State license to practice medicine in Florida, the State in which he is registered with DEA. The Order to Show Cause also notified Dr. Aquino that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Aquino, who was then incarcerated at the Federal Penitentiary at Eglin Air Force Base, Florida. A second copy was sent to his registered address at 2140 West 68th Street, Suite 310, Hialeah, Florida. According to the return receipt, the Order to Show Cause sent to the Federal facility was delivered to Dr. Aquino on March 4, 2002. DEA has not received a request for a hearing or any other reply from Dr. Aquino or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause to the registrant's address of record, as well as to his address as a Federal inmate, and (2) no request for hearing having been received, concludes that Dr. Aquino is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Aquino was licensed to practice medicine in the State of Florida under license number ME39969. In 1998 he was indicted on Federal charges involving inappropriate billing of the Medicare program. He was subsequently convicted and sentenced to a 51 month term of incarceration. On June 20, 2001, as a result of this conviction, the Florida Board of Medicine (Board) revoked Dr. Aquino's medical license. There is no evidence before the Deputy Administrator that the Board's order revoking Dr. Aquino's state medical license has been has been lifted or stayed and on October 15, 2004, it was confirmed via the Florida Department of Health, that his license remains in a revoked status. Therefore, the Deputy

Administrator finds that Dr. Aquino is not currently authorized to practice medicine in the State of Florida. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Rory Patrick Doyle, M.D., 69 FR 11,655 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1933); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear Dr. Aquino's medical license has been revoked and he is not currently authorized to handle controlled substances in Florida, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AA1153991, issued to Nilvio R. Aquino, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective December 20, 2004.

Dated: November 4, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–25694 Filed 11–18–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

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 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 Standards Administration is soliciting comments concerning the proposed collection: Pre-Hearing Statement (LS–18). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 18, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. This section provides that, before a case is transferred to the Office of Administrative Law Judges, the district director shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form. Each party shall, within 21 days after receipt of each form, complete it and return it to the district director. Upon receipt of the forms, the district director, after checking them for completeness and after any further conferences that, in his/her opinion, are warranted, shall transmit the forms to the Office of the Chief Administrative Law Judge. The LS–18 is used to refer cases to the Office of the Administrative Law Judges for formal hearings under the Act. This information collection is currently approved for use through May 31, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to prepare cases for formal hearings under the Act.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number: LS–18.

Affected Public: Individuals or households; business or other for-profit.

Total Respondents: 5,400.

Total Annual Responses: 5,400.

Estimated Total Burden Hours: 864.

Time Per Response: 10 minutes.

Frequency: On occasion.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $2,220.75.

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 will also become a matter of public record.

Dated: November 15, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–25685 Filed 11–18–04; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

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 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 Standards Administration is soliciting comments concerning the proposed collection: Claim for Continuance of Compensation (CA–12). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 18, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8133. The Act provides that eligible dependents of deceased employees receive compensation benefits on account of the employee's death. The OWCP monitors death benefits for current marital status, potential for dual benefits, and other criteria for qualifying as a dependent under the law. The CA–12 is sent annually to beneficiaries in death cases to ensure that their status has not changed and that they remain entitled to benefits. This information collection is currently approved for use through May 31, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information to determine eligibility for benefits.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Agency Number: CA–12.

Affected Public: Individuals or households.

Total Respondents: 5,450.

Total Annual Responses: 5,450.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 454.

Frequency: Annually.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $2,017.00.

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 will also become a matter of public record.

Dated: November 15, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–25686 Filed 11–18–04; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of the publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

Georgia
GA030053 (Jun. 13, 2003)
Kentucky
KY030001 (Jun. 13, 2003)
KY030002 (Jun. 13, 2003)
KY030003 (Jun. 13, 2003)
KY030004 (Jun. 13, 2003)
KY030005 (Jun. 13, 2003)
KY030006 (Jun. 13, 2003)
KY030007 (Jun. 13, 2003)
KY030029 (Jun. 13, 2003)
KY030035 (Jun. 13, 2003)
KY030039 (Jun. 13, 2003)

Volume IV

Illinois
IL030001 (Jun. 13, 2003)
IL030006 (Jun. 13, 2003)
IL030007 (Jun. 13, 2003)
IL030009 (Jun. 13, 2003)
IL030012 (Jun. 13, 2003)
IL030014 (Jun. 13, 2003)
IL030025 (Jun. 13, 2003)
IL030026 (Jun. 13, 2003)
IL030048 (Jun. 13, 2003)
Ohio
OH030003 (Jun. 13, 2003)

Volume V

Arkansas
AR030001 (Jun. 13, 2003)
AR030003 (Jun. 13, 2003)
AR030008 (Jun. 13, 2003)
AR030023 (Jun. 13, 2003)
AR030027 (Jun. 13, 2003)
Louisiana
LA030002 (Jun. 13, 2003)
LA030005 (Jun. 13, 2003)
LA030006 (Jun. 13, 2003)
LA030012 (Jun. 13, 2003)
LA030014 (Jun. 13, 2003)
LA030052 (Jun. 13, 2003)
Missouri
MO030001 (Jun. 13, 2003)
MO030003 (Jun. 13, 2003)
MO030006 (Jun. 13, 2003)
MO030007 (Jun. 13, 2003)
MO030010 (Jun. 13, 2003)
MO030015 (Jun. 13, 2003)
MO030018 (Jun. 13, 2003)
MO030020 (Jun. 13, 2003)
MO030041 (Jun. 13, 2003)
MO030043 (Jun. 13, 2003)
MO030047 (Jun. 13, 2003)
MO030052 (Jun. 13, 2003)
MO030053 (Jun. 13, 2003)
MO030055 (Jun. 13, 2003)
MO030057 (Jun. 13, 2003)
MO030059 (Jun. 13, 2003)

Volume VI

Idaho
ID030002 (Jun. 13, 2003)
Oregon
OR030001 (Jun. 13, 2003)
Washington
WA030001 (Jun. 13, 2003)
WA030002 (Jun. 13, 2003)
WA030003 (Jun. 13, 2003)
WA030007 (Jun. 13, 2003)

Volume VII

California
CA030001 (Jun. 13, 2003)
CA030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 10 day of November, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–25440 Filed 11–18–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Examinations & Testing of Electrical Equipment Including Exam, Testing, and Maintenance of High Voltage Longwalls

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.

DATES: Submit comments on or before January 18, 2005.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov*. Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

It has long been known that inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. Improperly maintained electric equipment has also been responsible for many disastrous mine fires and explosions. The regulations also contain recordkeeping requirements which may in some instances help operators in implementing an effective maintenance program. The subject records of tests and examinations are examined by coal miners, coal mine officials, and MSHA inspectors. MSHA inspectors examine the records to determine if the required tests and examinations have been conducted, to identify units of electric equipment that may pose a potential safety hazard, to determine the probable cause of accidents during accident investigations, and to evaluate the effectiveness of the coal mine operator's electrical maintenance programs. By comparing the records with the actual condition of electric equipment, MSHA inspectors may in some cases be able to identify weaknesses in the coal mine operator's electrical maintenance programs and require that the weaknesses be corrected.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to Records of Tests and Examinations of Personnel Hoisting Equipment. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

The subject regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition if electrocutions, mine fires, and mine explosions are to be prevented. Because of fire, electrocution and explosion hazards in coal mines, mine operators are required to comply with these paperwork provisions. Reduction of these requirements could result in increased hazards to miners. A reduction in the frequency of examinations and tests could allow existing unsafe conditions to develop, jeopardizing the safety of miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Examinations & Testing of Electrical Equipment Including Exam, Testing, and Maintenance of High Voltage Longwalls.

OMB Number: 1219–0116.

Frequency: Annually; Monthly; Weekly; On occasion.

Affected Public: Business or other for-profit.

Cite/reference	Frequency	Total responses	Response time (hours)	Burden hours
18.53(h)	Annual	3	1.1	3.3
75.820(b) and (e)	Annual	17,500	.083	1,453
78.821(d)	Annual	2,500	1.5	3,750
75.512 and 75.703 3(d)(11)	Weekly	760,100	0.5	380,050
77.502	Monthly	271,272	1.25	339,090
75.800—3 & 4 and 77.800—1 & 2	Monthly	31,188	0.75	23,391
75.900—3 & 4	Monthly	65,760	1.5	98,640
77.900—1 & 2	Monthly	18,084	0.75	13,563
75.1001—1(b) & (c)	6 Months	1,836	1.5	2,754
75.351	Monthly	7,128	1.25	8,910
Total		1,175,371		871,604.3

Respondents: 1,600.

Responses: 1,175,371.

Total Burden Hours: 871,604.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $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 will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of November, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–25687 Filed 11–18–04; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee; Amended Notice; Changes to the Agenda

The Legal Services Corporation (LSC) is announcing an amendment to the notice of the meeting of the Board of Directors Finance Committee (Committee). This meeting was announced in the **Federal Register** dated November 16, 2004, Volume 69, Number 220. The amendments are being made to reflect changes to the meeting Agenda. There are no other changes.

The amendments were authorized by a unanimous vote of the Board of Directors as indicated below.

RECORD OF VOTES

Member	Vote	
	Yes	No
Lillian BeVier	X	
Robert Dieter	X	
Thomas Fuentes	X	
Herbert Garten	X	
David Hall	X	
Michael McKay	X	
Thomas Meites	X	
Maria Luisa Mercado	X	
Frank Strickland	X	
Florentino Subia	X	
Ernestine Watlington	X	

Specifically, the following changes have been made to the agenda.

- The language at items 3 and 4 has been modified;
- A new item 5 has been added; and
- Items formerly numbered 5 through 10 are now numbered 6 through 11.

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet November 20, 2004. The meeting will commence immediately following conclusion of the meeting of the Operations and Regulations Committee, the deliberations of which are anticipated to terminate at approximately 10 a.m. It is possible that the Committee meeting may convene earlier or later than expected, depending upon when the preceding committee concludes its business.

LOCATION: Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

STATUS OF MEETING: Open.

Amended Agenda

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 10, 2004.
3. Consider and act on proposed revisions to LSC's Fiscal Year 2004 Consolidated Operating Budget.
4. Consider and act on proposed revisions to LSC's Fiscal Year 2005 Revised Temporary Operating Budget.
5. Consider and act on proposed revisions to LSC's Fiscal Year 2006 Appropriations request.

Closed Session

6. Briefing [1] by the Inspector General on the budget of the Office of the Inspector General.
7. Briefing by management on implications of increasing coverage limits under LSC's Directors & Officers liability insurance policy.

Open Session

8. Consider and act on increasing the coverage limits under LSC's Directors & Officers liability insurance policy.
9. Consider and act on other business.
10. Public comment.
11. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: November 17, 2004.

Victor M. Fortuno,

Vice President, General Counsel & Corporate Secretary.

[FR Doc. 04–25829 Filed 11–17–04; 12:53 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–128)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, December 7, 2004, 8 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room MIC–6H46, Overflow Room, MIC–3H46 Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Transforming the NASA Advisory Council Structure.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Marla K. King via e-mail at *marla.k.king@nasa.gov* or by telephone at (202) 358–1148. Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–25688 Filed 11–18–04; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 22, 29, December 6, 13, 20, 27, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 22, 2004

There are no meetings scheduled for the Week of November 22, 2004.

Week of November 29, 2004—Tentative

There are no meetings scheduled for the Week of November 29, 2004.

Week of December 6, 2004—Tentative

Tuesday, December 7, 2004

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, (301) 415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, December 8, 2004

12:55 p.m.—Affirmation Session (Public Meeting) (Tentative)

a. Motion to Quash OI Subpoena (Tentative)

1 p.m.—Briefing on Status of Davis Besse Lessons Learned Task Force Recommendations (Public Meeting) (Contact: John Jolicoeur, (301) 415–1724).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 9, 2004

2 p.m.—Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, (301) 415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 13, 2004—Tentative

Tuesday, December 14, 2004

1 p.m.—Briefing on Emergency Preparedness Program Initiatives (Public Meeting) (Contact: Nader Mamish, (301) 415–1086).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1)

Week of December 20, 2004—Tentative

There are no meetings scheduled for the Week of December 20, 2004.

Week of December 27, 2004—Tentative

There are no meetings scheduled for the Week of December 27, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 16, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–25777 Filed 11–17–04; 9:43 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Financial Disclosure Statement: OMB 3220–0127.

Under section 10 of the Railroad Retirement Act and section 2(d) of the Railroad Unemployment Insurance Act, the RRB may recover overpayments of annuities, pensions, death benefits, unemployment benefits, and sickness benefits that were made erroneously. An overpayment may be waived if the beneficiary was not at fault in causing the overpayment and recovery would cause financial hardship. The regulations for the recovery and waiver of erroneous payments are contained in 20 CFR parts 255 and 340.

The RRB utilizes Form G–423, Financial Disclosure Statement, to obtain information about the overpaid beneficiary's income, debts, and expenses if that person indicates that (s)he cannot make restitution for the overpayment. The information is used to determine if the overpayment should be waived as wholly or partially uncollectible. If waiver is denied, the information is used to determine the size and frequency of installment payments. The beneficiary is made aware of the overpayment by letter and is offered a variety of methods for recovery. One response is requested of each respondent. Completion is voluntary. The RRB proposes non-burden impacting editorial changes to Form G–423. The RRB also proposes to change the form number to DR–423 to reflect that it is a debt recovery form rather than a general use form.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form #(s)	Annual responses	Time (min)	Burden (hrs)
DR–423	1,200	85	1,700

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–25719 Filed 11–18–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pubic Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 22, 2004:

A Closed Meeting will be held on Tuesday, November 23, 2004 at 2 p.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), (6), (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 Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, November 23, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Adjudicatory matters.

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 16, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–25797 Filed 11–17–04; 11:36 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50659; File No. SR–FICC–2004–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Rules of the Government Securities Division To Modify the Penalty Assessment Process for Violations of Minimum Financial Standards and for Failures of Members To Submit Requisite Financial Reports on a Timely Basis

November 15, 2004.

I. Introduction

On May 17, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on August 4, 2004, amended proposed rule change File No. SR–FICC–2004–11 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on October 4, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of its Government Securities Division (''GSD'') by modifying the penalty assessment process for violations of minimum financial standards and for failure to submit requisite financial reports on a timely basis.

(A) Violations of Minimum Financial Standards

The rules of the GSD require netting members and clearing members to meet and maintain certain minimum financial standards at all times. While the majority of GSD members consistently satisfy their minimum financial requirements, occasionally members do breach these requirements and create undue risk for FICC and its GSD members. FICC has decided that a more uniform system of enforcing minimum financial requirements within the GSD would enhance the ability of FICC to minimize risk to itself and its members in a fair and effective manner.

Currently, the GSD Rules provide clearing fund consequences for the various categories of netting members that fall out of compliance with minimum financial requirements as follows:

Netting membership category	Current clearing fund consequence for falling below minimum financial standard[3]
Bank Member	Treated as a Category 2 Dealer.[4]
Category 1 Dealer Member	Treated as a Category 2 Dealer.
Category 2 Dealer Netting Member	Impose Required Fund Deposit equal to 150 percent of the normal calculation of Required Fund Deposit.
Category 1 Futures Commission Merchant Member.	Treated as a Category 2 Futures Commission Merchant.
Category 2 Futures Commission Merchant Member.	Impose Required Fund Deposit equal to 150 percent of the normal calculation of Required Fund Deposit.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50457 (September 27, 2004), 69 FR 59283.

[3] Each consequence remains effective for a period beginning on the date on which the member fell below such level and continuing until the ninetieth calendar day after the date on which such member returned to compliance with the applicable standard. If the consequence consists of a reclassification and the member does not return to compliance with its original minimum financial requirements within 90 calendar days of falling out of compliance, then the reclassification becomes permanent.

[4] Treating a bank or other non-Inter-Dealer Broker Category 1 Member as a Category 2 non-Inter-Dealer Broker Member for clearing fund purposes results in a higher clearing fund requirement for such a member because higher margin rates are imposed on non-Inter-Dealer Broker Category 2 Dealer Members than are imposed on banks and non-Inter-Dealer Broker Category 1 Members.

Netting membership category	Current clearing fund consequence for falling below minimum financial standard [3]
Category 1 Inter-Dealer Broker Member	Treated as a Category 1 Dealer as far as Required Fund Deposit exceeds $5 million.
Category 2 Inter-Dealer Broker Member	Treated as a Category 1 Inter-Dealer Broker, if it qualifies as such, or if it does not so qualify, impose Required Fund Deposit equal to 150 percent of the normal calculation of the Required Fund Deposit.
Government Securities Issuer Member	Treated as a Category 2 Dealer.

Under the proposed rule change, a violation of a minimum financial requirement by a member [5] of the GSD would result in the imposition on such member of a margin premium equal to the greater of (a) 25 percent of the member's unadjusted [6] clearing fund requirement or (b) $1,000,000, to continue for ninety calendar days after the later to occur of (i) the member's return to compliance with applicable minimum financial standards or (ii) FICC's discovery of the applicable violation. This increase would not apply to Category 1 Dealer Netting Members, Category 1 Futures Commission Merchant Netting Members or Category 2 Inter-Dealer Broker Netting Members, where such members would continue to be reclassified as a different category netting member.[7] In addition, such violation would result in (a) a report of the violation to the FICC Membership and Risk Management Committee at its next regularly scheduled meeting or sooner if deemed appropriate by FICC and (b) the placement of such member on FICC's ''watch list'' subjecting it to more frequent and thorough monitoring. None of these consequences would preclude FICC from imposing any other margin consequences permitted by GSD's Rules.

(B) Failure To Submit Requisite Financial Reports on a Timely Basis

Certain members that are required to provide monthly or quarterly financial data to FICC at times have violated GSD's membership requirements by not timely providing such financial data. In such instances, management contacts each offending member and follows up with a letter.

Failure to timely receive required information creates risk to FICC and hinders FICC's ability to appropriately assess the financial condition of such members. To encourage timely submission of required financial data, FICC has established a mechanism to fine delinquent members.[8] FICC has proposed two additional measures to enforce timely filing of financial information.

First, FICC will subject delinquent members to a more stringent clearing fund requirement. Specifically, FICC will automatically impose a margin premium equal to the greater of (a) 25 percent of the member's unadjusted clearing fund requirement or (b) $1,000,000. The margin premium will be applied until the appropriate financial data is submitted to FICC and is reviewed for compliance purposes. In addition, delinquent members will be precluded from taking back any excess clearing fund collateral to which they might ordinarily be entitled.

Second, members that fail to submit requisite financial reports on a timely basis will also automatically be placed on FICC's ''watch list'' and subject to more frequent and thorough monitoring.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.[9] The Commission finds that FICC's proposed rule change is consistent with this requirement because by encouraging members to maintain their minimum financial standards and to submit their required financial reports on a timely basis, FICC's ability to maintain a financially sound membership base should be enhanced.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–FICC–2004–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–25705 Filed 11–18–04; 8:45 am]

BILLING CODE 8010–01–M

[5] The proposed rule change only applies to GSD members that have minimum financial requirements (*i.e.,* GSD netting members).

[6] ''Unadjusted'' means the standard calculation before any additional assessments.

[7] If GSD Category 1 Dealer Netting Members, GSD Category 1 Futures Commission Merchant Netting Members and GSD Category 2 Inter-Dealer Broker Netting Members do not meet the membership qualifications applicable to the new category of netting member, then they will be subject to the increased margin premium specified above.

[8] Securities Exchange Act Release No. 49947 (June 30, 2004), 69 FR 41316 [File No. SR–FICC–2003–01].

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50658; File No. SR–ISE–2004–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Fee Changes

November 12, 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 September 30, 2004, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 8, 2004, the ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE filed the proposal pursuant to section 19(b)(3)(A) under the Act,[4] which renders the proposal effective upon filing the amended

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 8, 2004 (''Amendment No. 1''). In Amendment No. 1, the ISE clarified: (1) That the phrase ''customer order'' should be replaced with the phrase ''Public Customer Order,'' relating to the Payment for Order Flow execution fee on the ISE schedule of fees; (2) the meaning of ''member refresh program;'' (3) that the Cabinet Lease/Maintenance and the Additional Servers fees are the only computer fees subject to the waiver; and (4) the list of fee waivers that have expired and the list of delisted products that are proposed to be deleted.

[4] 15 U.S.C. 78s(b)(3)(A).

proposal with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees (i) to eliminate payment for order flow fees for certain transactions where there is a corresponding linkage transaction, (ii) for a pilot period, to cap and waive the facilitation execution fee when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism, (iii) to provide up to two months of equipment fee rebates to members that ''refresh'' certain computer equipment they use to connect to the Exchange within certain prescribed time periods under the Exchange's member refresh program, (iv) to adopt a surcharge fee for options on exchange traded funds based on indexes developed by the New York Stock Exchange (''NYSE''), and (v) to delete references to expired fee waivers and delisted products. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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 Exchange proposes to amend the Exchange's Schedule of Fees (i) to eliminate payment for order flow fees for certain linkage transactions, (ii) for a pilot period, to reduce and waive the facilitation execution fee and comparison fee when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism, (iii) to rebate up to two months of computer equipment lease fees to members that ''refresh'' certain computer equipment they use to connect to the Exchange within certain prescribed time periods under the Exchange's member firm refresh program, (iv) to adopt a surcharge fee for options on exchange traded funds based on indexes developed by the New York Stock Exchange (the ''NYSE''), and (v) to delete references to expired fee waivers and delisted products.

Specifically, the Exchange proposes to eliminate the payment for order flow fee for public customer transactions that Primary Market Makers (''PMMs'') effect after sending a Principal Acting as Agent Linkage order to an away exchange on behalf of the public customer.[6] For these transactions, PMMs currently pay the Exchange's transaction fees, the away exchange's transaction fees, and two sets of clearing fees. The Exchange believes that it is appropriate to lessen the costs on PMMs by not imposing a payment for order flow fee in addition to those charges.

The Exchange also proposes to reduce and waive the facilitation execution fee and the comparison fee when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism for a pilot period ending November 30, 2005. The structure of the reduction and waiver of the facilitation execution fee and the comparison fee is based on the structure of the reduction and waiver of the Nasdaq-100 Tracking Stock (''QQQ'') execution fee and the comparison fee that the Exchange instituted in November 2003 and extended in May 2004.[7] That is, when a member's monthly average daily volume (''ADV'') in the Facilitation Mechanism reaches 8,000 contracts, the member's facilitation execution fee for the next 2,000 contracts transacted in the Facilitation Mechanism would be reduced by $.10 per contract. Further, when a member's monthly ADV in the Facilitation Mechanism reaches 10,000 contracts, the Exchange would waive the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. As with the QQQ incentives, the Exchange is proposing this fee change to encourage members to use the Facilitation Mechanism. The pilot period would expire on November 30, 2005.

Moreover, the Exchange proposes to rebate up to two months of computer equipment lease fees to members that ''refresh'' certain computer equipment they use to connect to the Exchange within certain prescribed time periods under the Exchange's ''member refresh program.'' The Exchange clarifies that ''member refresh program'' is a voluntary program developed by the Exchange in which the Exchange seeks to have its members update their existing, obsolete computer equipment that they use to connect to the Exchange with new, state-of-the-art computer equipment.[8] Since the Exchange is fully-electronic, it believes that it is in its and investors' best interest to enable its members to have the most efficient, reliable, and fastest computer connection to the Exchange.[9] Since updating this computer equipment is costly and time consuming for members, the Exchange is proposing to adopt certain fee waivers to create an incentive for members to participate.[10] The Exchange recently implemented a voluntary member firm refresh program in which the Exchange seeks to have its members ''refresh'' their computer equipment that they use to connect to the Exchange with newer computer equipment. To induce members to participate in the program in a timely fashion, the Exchange proposes to rebate one month's computer equipment lease fees to members who agree to refresh their computer equipment no later than November 30, 2004.[11] Further, the Exchange proposes to rebate an additional one month's computer equipment lease fees to members who complete the refresh within two months of such agreement. The Exchange clarifies that only the Cabinet Lease/Maintenance fee of $400 per Gateway per month and the Additional Servers fee of $250 per server per month would be subject to the proposed fee waiver.[12]

The Exchange proposes to adopt a ten cent ($0.10) per contract surcharge fee for non-customer transactions in options on exchange-traded-funds (''ETFs'') based on two indexes developed by the NYSE, as discussed below. The Exchange recently signed a license

[5] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on November 8, 2004, the date the ISE filed Amendment No. 1.

[6] *See* Amendment No. 1, *supra* note 3.

[7] *See* Securities Exchange Act Release Nos. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004) (File No. SR–ISE 2003–32); and 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (File No. SR–ISE–2004–15).

[8] *See* Amendment No. 1, *supra* note 3.

[9] *Id.*

[10] *Id.*

[11] The Exchange extended the date by which a Member must contract with the Exchange to refresh its equipment from October 29, 2004 to November 30, 2004. *See* Amendment No. 1, *supra* note 3.

[12] *See* Amendment No. 1, *supra* note 3. To make that evident on the Schedule of Fees, the Exchange has placed an asterisk next to those fee items and the Notes on the Schedule of Fees.

agreement with the NYSE that grants the Exchange the right to, among other things, list options on ETFs based on indexes developed by the NYSE. The Exchange is listing two such products—the iShares NYSE 100 Index Fund (symbol: NY), and the iShares NYSE Composite Index Fund (symbol: NYC). The Exchange believes that adopting the surcharge fee for transactions in these products is the best way to off-set the license fee for these products.

Furthermore, the Exchange proposes to delete references to the following expired fee waivers: a Market Maker and Firm Proprietary Execution Fee waiver for Firm Proprietary trades in the iShares S&P 100 Index Fund through June 30, 2004; and a Surcharge for Firm Proprietary trades in the iShares S&P 100 Index Fund through June 30, 2004. The Exchange also proposes to delete references to the following delisted products: GS $ InvesTop Index, Technology Select Sector SPDR Fund (XLK), Utilities Select Sector SPDR Fund (XLU), Health Care Select Sector SPDR Fund (XLV), Industrial Select Sector SPDR Fund (XLI), Consumer Discretionary Select Sector SPDR Fund (XLY), Materials Select Sector SPDR Fund (XLB), Consumer Staples Select Sector SPDR Fund (XLP); Russell 2000 Value iShares (IWN), Russell 1000 Growth iShares (IWF), Russell 1000 Value iShares (IWD), Russell Midcap Index Fund iShares (IWR), Russell 3000 Value Index Fund iShares (IWW), Russell 3000 Growth Index Fund iShares (IWZ), Russell Midcap Growth Index Fund iShares (IWP), Russell Midcap Value Index Fund iShares (IWS), Russell 1000 Index Fund iShares (IWB), and Russell 3000 Index Fund iShares (IWV).[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[14] in general, and furthers the objectives of the Act[15] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, except in the case of the surcharge fee (which is, however, consistent with the Exchange's treatment of other licensed products), these fees generally would eliminate, reduce, waive, or rebate fees.

[13] *See* Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. 78s(b).

[15] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing the amended proposal with the Commission. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change, as amended, 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.[18]

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–ISE–2004–32 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–ISE–2004–32. 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. Copies of this filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2004–32 and should be submitted on or before December 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3255 Filed 11–18–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on November 8, 2004, the date the ISE filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50662; File No. SR–PCX–2004–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Notification Requirements for Offerings of Securities Pursuant to Regulation M

November 15, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

29, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, PCX is proposing a new rule PCXE Rule 5.2(b)(1), which would require an Equity Trading Permit Holder (''ETP Holder'') that participates in any offering of securities listed on the Exchange to submit certain information to PCXE regarding the offering. Proposed additions are italicized.

Rule 5.2(b)(1) Notification Requirements for Offering of Securities

(A) An ETP Holder which acts as the lead underwriter of any offering in a security, shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the following information:

(1) Name of security
(2) Symbol
(3) Type of security
(4) Number of shares offered
(5) Offering price
(6) Date of pricing
(7) Time of pricing
(8) Pricing basis
(9) Beginning and ending dates of the restricted period under Regulation M (if applicable)
(10) Syndicate ETP Holders
(11) Firm submitting notification
(12) Name of individual submitting notification
(13) Telephone number of individual submitting notification
(14) Such other information required by the Exchange from time to time

(B) Any ETP Holder effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of this proposed rule is to require that ETP Holders provide the Exchange information necessary to support appropriate surveillance over restricted trading activity on ArcaEx in accordance with Regulation M.[5] Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering by proscribing certain activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. Pursuant to proposed PCXE Rule 5.2(b)(1), the required information shall be submitted to the Exchange in such form and within such time frame as prescribed by the Exchange.

Each ETP Holder that participates in an offering of securities listed on the Exchange shall notify the Exchange of such offering and shall provide the Exchange with the following information:

a. Name of Security
b. Symbol
c. Type of Security
d. Number of Shares Offered
e. Offering Price
f. Date of Pricing
g. Time of Pricing
h. Pricing Basis
i. Beginning and Ending dates of the restricted period under Regulation M (if applicable)
j. Syndicate ETP Holders
k. Firm submitting notification
l. Name of individual submitting notification
m. Telephone number of individual submitting notification
n. Such other information required by the Exchange from time to time

In addition, any ETP Holder effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

The submission of this information to the Exchange will allow the Exchange to monitor trading in the security in question or any reference security traded on the Exchange for possible price manipulation.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the

[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] 17 CFR 242.100.
[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).

Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6) thereunder.[9] 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. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–102 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–PCX–2004–102. 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 PCX. 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–PCX–2004–102 and should be submitted on or before December 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3256 Filed 11–18–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (05–04–C–00–FNL) To Impose and To Use a Passenger Facility Charge (PFC) at the Fort Collins-Loveland Municipal Airport, Submitted by the Cities of Fort Collins and Loveland, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Fort Collins-Loveland Municipal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Manager, Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David C. Gordon, A.A.E., at the following address: Ft. Collins-Loveland Municipal Airport, 4900 Earhart Road, Loveland, Colorado 80538.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Fort Collins–Loveland Municipal Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (05–04–C–00–FNL) to impose and use a PFC at the Fort Collins-Loveland Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 10, 2004, the FAA determined that the application to impose and use a PFC submitted by the City of Fort Collins and the City of Loveland, Colorado, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 9, 2005.

The following is a brief overview of the applications.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 1, 2005.

Proposed charge expiration date: November 1, 2007.

Total requested for use approval: $315,329.

Brief description of proposed projects: Phase II and Phase III Rehabilitation of Runway 15/33 including installation of distance remaining signs and runway end identifier lights; fog seal and mark Runway 15/33; and replace airfield lighting controls.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Fort Collins-Loveland Municipal Airport.

Issued in Renton, Washington, on November 10, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–25701 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and To Use the Revenue From a Passenger Facility Charge (PFC) at Hartsfield-Jackson Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Hartsfield-Jackson Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Arthur L. Bacon, Director of Finance of the City of Atlanta, Department of Aviation at the following address: City of Atlanta, Department of Aviation, PO Box 20509, Atlanta, Georgia 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta, Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip R. Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia, 30337–2747, Telephone Number 404–305–7152. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the review from a PFC at Hartsfield-Jackson Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 9, 2004, the FAA determined that the application to use the revenue from a PFC submitted by The City of Atlanta was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 1, 2005.

The following is a brief overview of the application.

PFC Application No.: 05–07–U–00–ATL.

Level of the Proposed PFC: $4.50.

Proposed Charge Effective Date: August 2018.

Proposed Charge Expiration Date: January 2019.

Total Estimated Net PFC Revenue: $30,721,000.

Brief Description of Proposed Project(s):

Runway 8R End Around Taxiway (Use)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs and was previously approved as part of the impose and use PFC application 02–03–C–00–ATL: Air Taxi/Commercial Operators (ATCO) when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in College Park, Georgia on November 9, 2004.

Kelvin L. Solco,

Acting Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 04–25702 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Draft Environmental Impact Statement: Clackamas County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a draft environmental impact statement will be prepared for a proposed project in Clackamas County, Oregon.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Environmental Specialist, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301, Telephone (503) 587–4716.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation and the Clackamas County Department of Transportation and Development, will prepare a supplement to the draft environmental impact statement (EIS) on a proposed transportation improvement project to the ORE 212 Corridor between I–205 and the junction of ORE 212 and ORE 224 at Rock Creek (4 miles). The U.S. Army Corps of Engineers has declined to serve as a cooperating agency on this supplemental draft EIS. The proposed transportation improvement will improve capacity and safety within the ORE 212 Corridor are based on needs identified in the Regional Transportation Plan.

The original Draft Sunrise Corridor EIS was approved in 1993 and covered the corridor between I–205 and US 26. Due to lack of funding and uncertainty on the planned urbanization of rural lands in the corridor, a final EIS was not prepared which would have documented the selection of a new limited access expressway as the regionally preferred alternative for the corridor. A recent reevaluation of the draft EIS concluded that the section from I–205 to Rock Creek Junction has an existing transportation need, has independent utility, and does not preclude any alternatives proposed for the section from Rock Creek Junction to US 26. The reevaluation also concludes that the project planning and regulatory context has changed sufficiently to warrant the preparation of a supplemental draft EIS. A Major Investment Study conducted in 1997 supported the build alternative concept of a new limited-access expressway on a new alignment between I–205 and the Rock Creek Junction. Public involvement and agency coordination activities will be used to confirm that the no-build and design variations of an expressway are an appropriate range of alternatives for consideration in the supplemental draft EIS. The adopted regional transportation plan has demonstrated that the capacity problems are not appropriately solved with transportation systems management or transit-only solutions.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to provide organizations

and citizens who have previously expressed or are known to have an interest in this project. A series of public meetings will be held in the fall and winter of 2004/2005 and spring 2005. In addition, a public hearing will be conducted following the issuance of the supplemental draft EIS in the fall of 2005. Public notice will be given of the time and place of the meetings and hearing. The draft of the supplemental 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 the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 15, 2004.

Elton Chang,

Environmental Programs Coordinator, Oregon Division.

[FR Doc. 04–25673 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2004–19627]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Anetris Campbell, NHTSA 400 Seventh Street, SW., Room 5401–NVS–100, Washington, DC 20590. Anetris Campbell's telephone number is (202) 366–0933. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 552, Petitions for Rulemaking, Defects, and Noncompliance Orders.

OMB Control Number: 2127–0046.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: 49 U.S.C. section 30162 specifies that any ''interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding'' to prescribe a motor vehicle safety standard under 49 U.S.C. chapter 301, or to decide whether to issue an order under 49 U.S.C. section 30118(b). 49 U.S.C. 30111 gives the Secretary authority to prescribe motor vehicle safety standards. 49 U.S.C. section 30118(b) gives the Secretary authority to issue an order to a manufacturer to notify vehicle or equipment owners, purchasers, and dealers of the defect or noncompliance and to remedy the defect or noncompliance.

Section 30162 further specifies that all petitions filed under its authority shall set forth the facts, which it is claimed establish. that an order is necessary and briefly describe the order the Secretary should issue.

Estimated Annual Burden: 20.

Number of Respondents: 20.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: November 12, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–25653 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34513]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP), between BNSF milepost 141.73 near Rockview, MO, and BNSF milepost 186.14 near Lilbourn, MO, a distance of approximately 44.41 miles.

BNSF indicates that the transaction was to be consummated on November 8, 2004.

The purpose of the trackage rights is to allow UP to use the BNSF Rockview-Lilbourn line for traffic originating from or destined to industries on UP's line between Lilbourn and New Madrid, instead of its existing route between Malden Junction, MO, and Lilbourn, which will enable UP to avoid rebuilding the latter route.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34513, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 9, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–25481 Filed 11–18–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038–R

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Form 8038–R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

DATES: Written comments should be received on or before January 18, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

OMB Number: 1545–1750.

Form Number: 8038–R.

Abstract: Under Treasury Regulations section 1.148–3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038–R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 12 hours, 16 minutes.

Estimated Total Annual Burden Hours: 2,458.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: November 15, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–25651 Filed 11–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–106–91]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning an existing final regulation, PS–106–91 (TD 8563), State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit (§ 1.42–14).

DATES: Written comments should be received on or before January 18, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit.

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91.

Abstract: The regulation concerns the low-income housing credit under section 42 of the Internal Revenue Code. The regulation provides rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit from a national pool of credit under section 42(h)(3)(D). The regulation affects State and local housing credit agencies and taxpayers receiving credit allocations, and provides them with guidance for complying with section 42.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, individuals or households, and state, local or tribal governments.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: November 12, 2004.

Joe Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–25652 Filed 11–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

9 a.m. Meeting Opens

12 noon Meeting Adjourns

The planned discussion topics are:

(1) Discussion with ETA Director

(2) Overview of IRS Operations Support Organization

(3) IRS Security Summit

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Thursday, December 2, 2004. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held at the Hilton Garden Inn—Franklin Square—815 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: To have your name put on the guest list and to receive a copy of the agenda or general information about ETAAC, please contact Kim Logan on 202–283–1947 or at *kim.a.logan@irs.gov* by Monday, November 29, 2004. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the strategy for electronic tax administration, will help IRS achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: November 12, 2004.

Beatrice D. Howell,

Acting Director, Strategic Services Division.

[FR Doc. 04–25740 Filed 11–18–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held on Monday, December 13 and Tuesday, December 14, 2004. On Monday, December 13, the Committee will meet at 8:30 a.m. to 4:30 p.m., VA Medical Center, Building 500, in Room 6400, 11301 Wiltshire Blvd., Los Angeles, CA 90073. On Tuesday, December 14, the Committee will meet at 8 a.m. at New Directions, Inc. Bldg. 116, 11303 Wiltshire Blvd., Los Angeles, CA 90073. The Committee will recess at approximately 10 a.m. to tour various homeless programs that serve veterans and reconvene at New Directions, Inc. at 2:30 p.m. and will adjourn at 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide ongoing advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On December 13, 2004 the Committee will receive reports from program experts, assess the availability of health care services, review the Capital Asset Realignment for Enhanced Services (CARES) project and other initiatives designed to assist veterans who are homeless. On December 14, 2004 the Committee will continue to receive reports from VA staff and local homeless service providers. The Committee will also visit one or more homeless veterans programs funded by the Department of Veterans Affairs.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 8, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–25728 Filed 11–18–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Veterans Health Administration Resident Education, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Veterans Health Administration (VHA) Resident Education will meet December 9, 2004, from 8:30 a.m. until 3 p.m. This meeting will be held at the Ritz-Carlton, 1150 22nd Street, NW., Washington, DC. The meeting is open to the public.

The Committee has been established to provide broad assessment of physician resident positions in relationship to future health care needs of veterans. The Committee will affirm the philosophical principles governing VHA's internal Graduate Medical Education Advisory Committee, provide external perspective and national guidance on VHA resident education, and make recommendations regarding further actions to the Secretary.

The agenda topics for this meeting will include briefings and updates on the VHA Resident Education Program and reflect upon VHA's graduate medical education participation in the past, present, and future. The discussions will primarily center on evaluation of how VHA may best go forward with the goal of balancing the educational needs of resident physicians while providing excellent health care to veterans.

Any member of the public wishing to attend should contact Mr. Andrew Fleshman at the Department of Veterans Affairs, Office of Academic Affiliations (144), 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–8369, by fax at (202) 273–9031, or by e-mail at *vhacooaa@va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting or within 10 days after the meeting. One half hour of the Committee's session beginning at 2:30 p.m. will be set aside to receive oral public statements.

Dated: October 27, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–25727 Filed 11–18–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Veterans Health Administration Resident Education, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Veterans Health Administration (VHA) Resident Education will meet December 9, 2004, from 8:30 a.m. until 3 p.m. This meeting will be held at the Ritz-Carlton, 1150 22nd Street, NW., Washington, DC. The meeting is open to the public.

The Committee has been established to provide broad assessment of physician resident positions in relationship to future health care needs of veterans. The Committee will affirm the philosophical principles governing VHA's internal Graduate Medical Education Advisory Committee, provide external perspective and national guidance on VHA resident education, and make recommendations regarding further actions to the Secretary.

The agenda topics for this meeting will include briefings and updates on the VHA Resident Education Program and reflect upon VHA's graduate medical education participation in the past, present, and future. The discussions will primarily center on evaluation of how VHA may best go forward with the goal of balancing the educational needs of resident physicians while providing excellent health care to veterans.

Any member of the public wishing to attend should contact Mr. Andrew Fleshman at the Department of Veterans Affairs, Office of Academic Affiliations (144), 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–8369, by fax at (202) 273–9031, or by e-mail at *vhacooaa@va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting or within 10 days after the meeting. One half hour of the Committee's session beginning at 2:30 p.m. will be set aside to receive oral public statements.

Dated: October 27, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–25796 Filed 11–18–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Availability of Report

In compliance with section 13 of Public Law 92–463 (Federal Advisory Committee Act) notice is hereby given that the 2004 Annual Report of the Department of Veterans Affairs (VA) Advisory Committee on Women Veterans has been issued. The report summarizes activities and recommendations of the Committee on matters relative to VA programs and policies affecting women veterans. It is available for public inspection at two locations: Mr. Richard Yarnall, Federal Advisory Committee Desk, Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Room LM–B42, 101 Independence Avenue, SE., Washington DC 20540–4172; and Department of Veterans Affairs, Center for Women Veterans, Suite 438 (00W), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: October 1, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–25726 Filed 11–18–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
November 19, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40–A; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; ID 080204G]

RIN 0648–AS34

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40–A

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is implementing approved measures contained in Framework Adjustment 40–A (FW 40–A) to the NE Multispecies Fishery Management Plan (FMP). FW 40–A was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the fishery to target healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). This rule implements three programs to allow vessels to use Category B Days-at-Sea (DAS) (both Regular and Reserve) to target healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) for the Georges Bank (GB) Cod Hook Sector (Sector); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40–A relieves an Amendment 13 restriction that prohibited vessels from fishing both in the Western U.S./Canada Area and outside that area on the same trip.

DATES: Effective November 19, 2004. Comments must be received by December 20, 2004.

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

- E-mail: *FW40A@NOAA.gov*. Include in the subject line the following: ''Comments on the Proposed Rule for Groundfish Framework 40–A.''
- Federal E–Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Interim Rule for Groundfish Framework 40–A.''
- Fax: (978) 281–9135.

Copies of FW 40–A, its Regulatory Impact Review (RIR), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

Written comments regarding this interim final rule should be submitted to the Regional Administrator at the above address. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator by e-mail to David Rostker, *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281–9347, fax; (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), and most measures became effective on May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks due to the multispecies nature of the fishery. As a result, yield from healthier stocks may have been reduced and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. Because of the complexity of Amendment13, it was not possible to develop and analyze measures to increase yield on these healthier stocks in time to meet litigation-imposed deadlines. FW 40–A was conceived and developed as a follow-up to Amendment 13 to implement programs that would provide additional opportunities to target healthy groundfish stocks in order to maximize the ability to achieve OY. These programs will also mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

Among the primary Amendment 13 management measures to control fishing mortality are DAS reductions. Amendment 13 categorized the DAS allocated to each permit as Category A DAS, Category B DAS, which were further categorized as Regular B and Reserve B, and Category C DAS. Category A DAS can be used to target any regulated groundfish stock, while Category B DAS are to be used only to target healthy groundfish stocks in a restricted manner. Category C DAS cannot be used at all at this time. Amendment 13 implemented one program that allows the use of B DAS (CA II Yellowtail Flounder SAP). This interim final rule implements the following B DAS Programs proposed in FW 40–A, with the exceptions noted below: The Regular B DAS Pilot Program; the CA I Hook Gear Haddock SAP for the Sector; and the Eastern U.S./Canada Haddock SAP Pilot Program. The disapproved measures are: Allowance of non-Sector participants in the CA I Hook Gear Haddock SAP; and the use of a flounder net in the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of the reasons for disapproval of those measures is provided under Disapproved Measures.

Comments and Responses

Regular B DAS Pilot Program

Comment 1: One commenter suggested that, under the Regular B DAS Pilot Program, GB yellowtail flounder should not be listed as one of the stocks that can withstand additional fishing effort, given the recent updated status of the stock and the fact that the Council approved 2005 fishing year TAC lower than the TAC adopted for the 2004 fishing year.

Response: FW 40–A identifies GB yellowtail flounder as a target stock, i.e., a stock that can support additional fishing effort under the Regular B DAS Pilot Program. The list of target species was provided for informational purposes, and is based upon the analyses in Amendment 13. Based on the recent Transboundary Management Guidance Committee (TMGC) Guidance Document for the 2005 fishing year, there is an indication that the biomass level for GB yellowtail flounder may be lower than previously estimated in Amendment 13. The harvest level of GB yellowtail flounder for the current fishing year is based upon the best available information at the time FW 40–A was developed, and the harvest of the GB yellowtail flounder stock will be limited by a hard TAC. The TAC for GB yellowtail flounder that the Council approved for the 2005 fishing year takes into account the current estimate of the biomass level, and the TAC for the 2004 fishing year. The TAC for GB yellowtail flounder and the use of Regular B DAS to target this stock is consistent with the TMGC's management strategy and the goals of the FMP.

Comment 2: Seven commenters were concerned that, under the proposed rule, participants in the Regular B DAS Pilot Program would be prohibited from fishing in the Eastern U.S./Canada Area, and that this prohibition would restrict opportunities to use Regular B DAS. The commenters noted that this restriction was inconsistent with the FW 40–A document, would contribute to the underharvest of the U.S./Canada haddock TAC, and prevent realization of OY. The Council, in a September 29, 2004, letter to NMFS clarified its intent that vessels should be allowed to participate in the Regular B DAS Pilot Program and fish in the Eastern U.S./Canada Area.

Response: NMFS agrees that the proposed rule was inconsistent with the Council's intent; this interim final rule is accordingly revised to allow vessels the opportunity to fish under the Regular B DAS Pilot Program when fishing in the Eastern U.S./Canada Area.

Comment 3: Two commenters suggested a clarification to the requirement for vessels participating in the Regular B DAS Pilot Program to notify NMFS for the purpose of deploying observers. Specifically, the commenters noted that the requirement that vessels provide information on the planned fishing area or areas (Gulf of Maine (GOM), GB, or Southern New England (SNE)/Mid-Atlantic (MA)) should be clarified to indicate that the area planned for fishing is not binding (i.e., even though a vessel indicates it intends to fish in the GOM, it can change its plan and fish elsewhere).

Response: NMFS agrees that this requirement is non-binding and has revised the regulatory text of the interim final rule to clarify this requirement.

Comment 4: Two commenters disagreed with an aspect of the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program requirement to ''flip'' from a Regular B DAS to an A DAS. Specifically, the commenters did not support the timing of the flipping requirement as written in the proposed rule, which would have required vessels to flip immediately if the vessel brings on board more legal-sized groundfish than the applicable landing limit. The commenters stated that the proposed regulatory language was not consistent with the Council's intent that a vessel flip from a Regular B DAS to an A DAS prior to crossing the demarcation line on the way back to port after fishing. One commenter suggested that, if the requirement for immediate flipping were retained, the restriction should not apply on a per-DAS basis, but should instead be applied to the maximum trip limit.

Response: Based on public comment, including the Council's, NMFS agrees that the proposed rule was not consistent with the Council's intent, and this interim final rule requires a vessel to flip from a B DAS to an A DAS prior to crossing the demarcation line, if the vessel has on board more legal-sized groundfish than the landing limits.

Comment 5: Two commenters stated that the Regional Administrator's, Northeast Regional Office NMFS (Regional Administrator's) authority to close the Regular B DAS Pilot Program is too vague. The Council suggested removal of the Regional Administrator's authority to close for reasons relating to observer coverage, and stated that the Council did not recommend using the level of observer coverage as a basis for closing the Program.

Response: Because the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program are pilot programs, and one of the objectives of these programs is to test the Regular B DAS concept, NMFS believes that consistency with the objectives of the FMP must be a condition for the continuation of the program. Pursuant to the authority granted the agency under section 305(d) of the Magnuson-Stevens Act, this interim rule provides that the Regional Administrator may terminate the programs if it is projected that continuation of the programs would undermine the achievement of the objectives of the FMP or the programs. With respect to the comments that the Regional Administrator's authority is too vague, NMFS believes that, in this case, the non-specific nature of this authority is in the best interest of the NE multispecies fishery. Because there are no data regarding fishing practices under the Regular B DAS Pilot Program, it would be difficult for the Regional Administrator to develop precise criteria to demonstrate that the programs are working as designed. NMFS intends to deploy a level of observers that is much higher than in the fishery at-large, and to closely monitor all sources of information in order to monitor the incidental TACs and ensure that continuing operation of the pilot programs is consistent with the goals of the FMP.

Comment 6: One commenter suggested that FW 40–A implement hard TACs on the stocks that are targeted (while fishing under a B DAS). The commenter was concerned that the Amendment 13 allocation of A DAS may not adequately limit the level of fishing mortality on the target stocks, and questioned the assumption in the FW 40–A analysis that concludes the current fishing mortality rates are less than the target fishing mortality rates (for the target stocks). The commenter noted that the rate of harvest of the GB yellowtail flounder from the CA II Yellowtail Flounder SAP was higher in reality than had been estimated in the Amendment 13 analysis, and concluded that, in a similar manner, the rate of harvest of other target stocks under the programs proposed by FW 40–A may also be higher than anticipated in the FW 40–A analysis. The commenter concluded that hard TACs on target stocks are necessary to ensure that the mortality targets are not exceeded.

Response: A hard TAC for target stocks while fishing under an A DAS was not included in FW 40–A. Because NMFS can only approve or disapprove substantive measures in a framework adjustment, it cannot add a new, substantive measure that was not proposed in FW 40–A. Regarding the commenter's concerns about the

allocation of A DAS, with the exception of the hard TACs implemented for the U.S./Canada Management Area and the GB cod hard TAC associated with the Sector, Amendment 13 implemented DAS as the principal management tool to control fishing effort. Although FW 40–A implements incidental hard TACs for stocks of concern for the Regular B DAS Pilot Program, as well as hard TACs for species of concern (for both SAPs) and for target species for one of the two SAPs, it does not modify the basic strategy of the use of A DAS to control effort on target stocks under the Regular B DAS Pilot Program. Table 40 in FW 40–A compares the target fishing mortality to the expected fishing mortality and concludes that, for the healthy stocks, the fishing mortalities that are expected to result from the Amendment 13 measures are approximately one-half the Amendment 13 target fishing mortalities. Information on landings to date of GB haddock from the U.S./Canada Management Area in the 2004 fishing year show that, for GB haddock, the current landings are well below the U.S./Canada TAC. Although the use of B DAS to target stocks that are in relatively good condition is an additional source of fishing mortality, FW 40–A implements many constraints on the use of B DAS that will limit fishing mortality on target stocks (e.g., incidental TACs, limitation of number of B DAS used, hard TACs for the SAPs). Due to these constraints, it is very likely that the use of B DAS will be limited by incidental hard TACs in the Regular B DAS Pilot Program, and by hard TACs or incidental hard TACs in the two SAPs implemented under FW 40–A prior to exceeding the target TACs for the target stocks. Secondly, the FW 40–A document concludes that Regular B DAS use in the pilot program will occur in all allowable areas and will not be focused on any single stock. Lastly, as indicated in the response to Comment 5, the Regional Administrator is provided the authority to close the programs if continuation of the programs are determined to be inconsistent with the objectives of the FMP.

Comment 7: One commenter supported hard incidental TACs for the Regular B DAS Pilot Program, but was against increasing the incidental TACs in 2005, as proposed in FW 40–A, stating that this increase was not supported by scientific information currently available. The commenter was particularly concerned about the GB cod incidental TAC increase, urged use of the precautionary approach, and suggested that any increases should be delayed until the 2005 assessments.

Response: The increase in TACs for the 2005 and 2006 fishing year are based upon the Amendment 13 analysis that indicates stocks will increase in size and is based on the best scientific information available. In 2005, a biennial review will be conducted in accordance with the process implemented by Amendment 13. At that time, the Plan Development Team (PDT) will perform a review of the fishery, develop target TACs for the upcoming fishing year, and develop options for Council consideration on any necessary changes to measures to achieve the goals and objectives of the FMP. This biennial review, however, does not preclude the Council from adjusting the TACs through a management action at any time, if necessary, in order to respond to new information on the status of the stock.

Comment 8: One commenter expressed general support for the range of management measures proposed to implement the Regular B DAS Pilot Program, including the Vessel Monitoring System (VMS) requirements, NMFS notification for deployment of observers, daily reporting via VMS, mandatory flipping, the prohibition on discarding, and the 1–year duration of the program.

Response: NMFS agrees and the interim final rule implements these proposed measures.

Comment 9: Two commenters did not support the Regular B DAS Pilot Program requirements regarding white hake. The commenters suggested that similar management measures be applied to the white hake stock as apply to the rest of the groundfish stocks of concern, i.e., when the incidental TAC of white hake is harvested for a quarter, the entire white hake stock area should be closed to the use of a Regular B DAS for the remainder of the quarter, rather than a prohibition on white hake retention. The commenters believe that the proposed FW 40–A measure to prohibit retention of white hake would provide less protection for that stock than for the other groundfish stocks of concern, and that such separate treatment is not justified due to the status of the white hake stock and the level of fishing mortality on that stock. Lastly, one commenter stated that the prohibition on retention of white hake (when the incidental TAC has been harvested) is inconsistent with the mandatory discard provision of the Regular B DAS Pilot Program.

Response: The FW 40–A document proposed that, for stocks of concern, with the exception of white hake, once the incidental TAC has been harvested, the stock area should close to the use of Regular B DAS. The stated reason for this exception is the fact that the geographic area associated with the white hake stock covers all the statistical areas under management by the FMP. Because of the large stock area, as well as the relatively low incidental TAC for white hake, closure of the stock area upon harvest of the TAC could result in relative swift closure of the entire Regular B DAS Pilot Program, resulting in relatively few economic benefits accruing to the fishery. Although the incidental catch TACs are the primary measure to control fishing mortality, they are not the only control. The maximum number of Regular B DAS that may be used per quarter is 1,000. The FW 40–A analysis indicates that the incidental TACs for CC/GOM yellowtail flounder, GB cod, and white hake are likely to be caught before 1,000 Regular B DAS are used. When the TACs for CC/GOM yellowtail flounder or GB cod are harvested, the geographic areas associated with those stocks will be closed to the use of Regular B DAS. Table 52 of FW 40–A indicates that the size of the TAC and the number of DAS that it may take to catch the TAC are lower for both CC/GOM yellowtail flounder and GB cod (9 mt, 794 days; 19.75 mt, 435 days, respectively) than for white hake (38.5 mt; 849 days). Based upon this information, closure of the CC/GOM yellowtail flounder and GB cod stock areas will likely occur prior to the time the white hake quarterly TAC is reached. Because these two stock areas comprise essentially the same area as the white hake stock, and closure on the basis that these stock incidental TACs are reached would result in the closure of the areas to the use of Regular B DAS, the incidental TACs for CC/GOM yellowtail flounder and GB cod are likely to provide indirect protection to white hake. NMFS agrees that white hake is a stock of concern, and believes that the management measures for white hake achieve an acceptable balance of protection of the stock and consideration of economic factors.

Comment 10: One commenter requested that NMFS include in the letter to permit holders announcing the approval of FW 40–A and the interim final rule implementing the management measures a clarification that only monkfish vessels with a monkfish limited access Category C or D permit may use a Regular B DAS.

Response: NMFS will include this clarification in the letter to NE multispecies permit holders. This clarification is necessary due to the complexity of the rules that pertain to

the vessels with both limited access multispecies and monkfish permits.

CA I Hook Gear Haddock SAP

Comment 11: Eight commenters did not support the proposed CA I Hook Gear Haddock SAP measures pertaining to the harvest of cod. Five of these expressed concern about the potential impact of the use of A DAS by non-Sector vessels in the SAP on GB cod given that, as proposed, cod caught under an A DAS would not count toward the incidental TAC for GB cod. The commenters stated that FW 40–A does not include a quantitative analysis of the impacts of the use of an A DAS in CA I, specifically with respect to GB cod, and made the point that an A DAS fished inside CA I is not equivalent to an A DAS fished outside of CA I. One commenter stated that the unconstrained use of A DAS in the SAP would exacerbate the derby aspect of the fishery and create a safety concern due to the small size of vessels that may choose to participate, and the weather that can be expected during the season proposed for the SAP. One commenter suggested that all legal-sized cod caught by non-sector vessels should be retained in order to minimize the potential impact on cod. Four commenters stated that the incidental TAC for GB cod allocated to non-Sector vessels (16 percent of the overall GB cod incidental TAC; 12.6 mt for the 2004 fishing year) is too high, and two commenters stated that only cod caught on a B DAS should count toward the incidental TAC.

Response: NMFS agrees that the potential impact of the SAP on GB cod as proposed for non-Sector vessels is of concern, and is one of the reasons NMFS has disapproved the measures that allow the participation of non-Sector vessels in the SAP. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels in contained in the preamble of this rule under ''Disapproved Measures.'' The specific changes to the regulations are identified in the preamble under ''Changes to the Proposed Rule.''

Comment 12: Four commenters expressed concerns regarding the different rules proposed for the Sector and non-Sector vessels. Two commenters noted that the management measures proposed for the non-Sector vessels put the Sector vessels at a financial disadvantage compared with the non-Sector vessels. One commenter considered the different rules applicable to the non-Sector as an unfair double-standard. One commenter believed that the rules that were proposed to pertain to the non-Sector vessels did not accurately reflect the results of the research that forms the basis of the analysis of the impacts of the SAP.

Response: NMFS agrees that the FW 40–A document did not fully justify the differences in the proposed management measures that pertain to Sector and non-Sector participants in the SAP. Furthermore, implementation of two sets of rules for the SAP (Sector rules and non-Sector rules) would be extremely difficult to enforce and monitor, creating a significant administrative burden to NMFS. The administrative and enforcement costs, with relatively little economic benefit derived from the non-Sector vessels, is one of the reasons that NMFS has disapproved the measures that would have allowed the participation of non-sector vessels in the SAP. A full explanation of the reasons for the disapproval of the management measures that would have pertained to the non-Sector vessels in contained in this preamble under ''Disapproved Measures.''

Comment 13: Five commenters addressed the proposed requirement for VMS double polling of vessels participating in the CA I Hook Gear Haddock SAP. Commenters requested either that the requirement for double polling be eliminated, or that NMFS not hold vessel owners responsible for paying for double polling.

Response: NMFS concurs and has removed the requirement of mandatory double polling from the interim final rule because the additional cost (to vessel owners or NMFS) was not specifically included in FW 40–A and may not currently be justified. Instead this interim final rule requires that double polling may be initiated by NMFS, at its discretion, for NE multispecies vessels fishing in the U.S./Canada Area or in a SAP. If NMFS uses its discretion to initiate double polling in the future, NMFS will pay for the cost of the second poll.

Comment 14: One commenter did not support Sector vessels fishing in CA I, and believed that access to that area is unjustified because it is a closed area.

Response: The access to CA I by Sector vessels implemented by this interim final rule is consistent with the premise of a SAP and the goals of the FMP. Allowing vessels to fish in CA I is justified by the status of the haddock stock, the potential economic gains for the fishery, and the limited scope and duration of the program and the restrictions that limit the biological impacts. This interim final rule implements a hard TAC for haddock harvested in the SAP, and current regulations include a hard TAC for GB cod harvested by the Sector, including cod caught incidentally in the SAP.

Comment 15: Two commenters suggested that the interim final rule prohibit vessels that are participating in the CAI SAP from having either a gillnet or trawl onboard.

Response: Because the intent of this SAP is to allow vessels to use demersal longlines or tubtrawl gear to target haddock in a portion of CA I, this interim final rule clarifies that only longline or tubtrawl gear are allowed aboard vessels that participate in this SAP.

Comment 16: One commenter noted that the SAP may create a derby fishery for haddock, and stated concern that there could be impacts on the haddock market.

Response: NMFS agrees that as proposed there may have been incentive for non-Sector, as well as Sector vessels to fish in the SAP, thus creating a derby and potentially impacting the haddock market, at least in the short term. Although vessels may choose whether and when to participate in the SAP, disapproval of participation of non-Sector vessels in this SAP will likely lessen or eliminate a potential derby because Sector vessel are fishing under Sector rules that strictly limit and spread out effort on cod, which should also have an impact on how and when effort directed at haddock in this SAP will occur.

Comment 17: Three commenters requested clarification in the interim final rule about the requirement for the Sector to provide observer funding in this SAP, if necessary. They requested that NMFS make it clear that Sector vessels would not be unfairly burdened with the costs associated with funding non-Sector vessels participating in the SAP.

Response: The commenters' concerns should be resolved by the fact that non-Sector vessels will not be allowed to participate in the SAP. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels in contained in the preamble of this rule under ''Disapproved Measures.''

Comment 18: Three commenters were concerned with the specific provisions regarding the haddock TAC and the GB cod incidental TAC associated with the SAP as proposed, and how they may affect the Sector's fishing activities in the SAP. Three commenters suggested that NMFS make it clear that, when the incidental GB cod TAC is harvested, Sector vessels would be allowed to continue to fish under a B DAS in the

SAP, since they are fishing under a separate GB cod TAC allocation. One commenter further clarified that Sector vessels should be allowed to continue to fish in the SAP until the haddock TAC has been harvested. The Council commented that the proposed rule was incorrect in stating that only haddock caught under a B DAS in the SAP would be counted against the haddock TAC, and clarified that the Council's intent was that all haddock caught in the SAP should be applied against the haddock TAC.

Response: All cod caught by Sector vessels fishing in the SAP will be counted against the Sector's allocation of GB cod. The proposed rule stated that the GB cod incidental TAC would apply to non-Sector vessels fishing in the SAP. The commenters' concerns regarding this issue should be resolved by the fact that participation in the SAP by non-Sector vessels has been disapproved. With respect to the haddock TAC, NMFS agrees with the Council that FW 40–A intended that haddock harvested under either an A DAS or B DAS should count toward the 1,000–mt haddock TAC. Although the preamble of the proposed rule was consistent with the Council's intent (i.e., all haddock caught in the SAP would be counted against the haddock TAC), the regulatory text of the proposed rule was incorrect and conflicted with the preamble of the proposed rule in stating that only haddock caught under a B DAS would be counted against the haddock TAC. NMFS has corrected the regulatory text of this interim final rule to reflect Council intent that the all haddock caught in the SAP will be counted against the TAC.

Comment 19: One commenter suggested that all legal-sized cod caught by non-Sector vessels should be retained in order to minimize the impact of the SAP on GB cod.

Response: The commenter's concerns are rendered moot by the fact that participation in the SAP by non-Sector vessels has been disapproved. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels is contained in this preamble under ''Disapproved Measures.''

Comment 20: One commenter suggested that because white hake may be caught in the SAP, and white hake is a groundfish stock of concern, the interim final rule should include measures to monitor and control the bycatch of white hake in the SAP.

Response: Such a measure was not proposed by the Council in FW 40–A. Because NMFS can only approve or disapprove substantive measures in a framework adjustment, it cannot add a new substantive measure that is not part of FW 40–A. Furthermore, such new requirements are not necessary because the vessel reporting requirements in the current regulations already require vessels with a NE multispecies permit to report all species landed or discarded. The bycatch of white hake is controlled indirectly by the haddock TAC set for the SAP, which will limit the total amount of fishing effort in the SAP. Further, the disapproval of participation of non-Sector vessels in the SAP will reduce potential effort in this SAP.

Comment 21: One commenter requested clarification as to whether Sector participants in the SAP must report cod and haddock catches from the SAP using VMS, or through the Sector Manager. The commenter suggested that Sector vessels should be required to report daily either through VMS or the Sector Manager.

Response: FW 40–A states that the Sector Manager will provide NMFS with daily reports of cod and haddock landings. The proposed rule regulatory text stated that the owner or operator of a vessel participating in the Sector and declared into the CA I Hook Gear Haddock Area must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, of each day fished, when declared into the area. The Council's intent was for Sector members to report through the Sector Manager. NMFS believes it is impractical to administer two separate reporting systems in order to allow vessels the option of either reporting through VMS or the Sector Manager. The preamble of the interim final rule will clarify that Sector members participating in the SAP must report daily to the Sector manager and that the Sector Manager will report daily to NMFS.

Comment 22: One commenter requested that NMFS clarify that all GB cod caught by Sector members participating in the SAP be counted against the Sector's allocation of GB cod.

Response: The preamble to the proposed rule stated ''All cod caught by Sector vessels would count against the Sector's cod TAC.'' NMFS will clarify the regulatory text to explicitly state that all cod caught by Sector vessels will count against the Sector's allocation of GB cod.

Eastern U.S./Canada Haddock SAP Pilot Program

Comment 23: Two commenters strongly supported this Pilot Program due to the healthy status of the GB haddock stock, as well as the need to encourage the harvest of the stocks managed under the U.S./Canada Resource Sharing Understanding.

Response: NMFS agrees that this Pilot Program is justified because it will provide additional opportunity for NE multispecies DAS vessels using trawl gear to target haddock using B DAS and is consistent with the goals of FW 40–A and the FMP. The SAP Pilot Program is thus implemented through this interim final rule.

Comment 24: One commenter did not support the requirement to provide information to NMFS 72 hours prior to departing on a trip into the Eastern U.S./Canada Haddock SAP Pilot Program (for the purpose of deploying observers), and stated that the requirement is impractical and poses risks to safety. Two commenters did not support the requirement to provide such information to NMFS for trips into the CA I Hook Gear Haddock SAP.

Response: This requirement is consistent with the observer notification requirement currently in effect for vessels fishing in the U.S./Canada Management Area. Vessel owners who choose to fish in either of these programs must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the SAP, in accordance with instructions provided by the Regional Administrator. The objective is to provide notification to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers. Monitoring of these new programs is critical to their success and continuation or adjustment, and to collect critical information on their effectiveness. NMFS has determined that a notification period of 72 hours represents a balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of FW 40–A. NMFS disagrees that such notification poses a safety risk. The vessel operator is responsible for safe operation of the vessel, and NMFS does not expect vessel operators to make decisions that subject their vessels to unnecessary risk in order to comply with this observer regulation or any other regulation. The NMFS observer program will work with vessel owners in order to try to accommodate their needs.

Comment 25: One commenter believed that the allocation of an incidental GB cod TAC to the Eastern

U.S./Canada Haddock SAP Pilot Program has no purpose and appeared to represent an inconsistency with the U.S./Canada Resource Understanding. The commenter interpreted this incidental TAC as an additional allocation of GB cod that would result in the overharvest of the agreed upon U.S. GB cod TAC (under the Resource Understanding). Furthermore, he stated that the existence of the U.S./Canada Resource Sharing Understanding TAC for GB cod makes the proposed incidental GB cod TAC unnecessary. The commenter suggested that the incidental GB cod TAC proposed for this SAP be reallocated to the Regular B DAS Pilot Program.

Response: The incidental GB cod TAC for this SAP is not an allocation of GB cod that NE multispecies vessels may catch in addition to the United States's share of the GB cod TAC established under the U.S./Canada Resource Sharing Understanding. The GB cod TAC set pursuant to the Understanding represents the total amount of GB cod that may be caught from the Eastern U.S./Canada Area. It is important to note that the SAP area represents only a small portion of the Eastern U.S./Canada Area.

Comment 26: Two commenters expressed general support for the range of management measures proposed to implement the Eastern U.S./Canada Haddock SAP Pilot Program, with one commenter stating that it would be important for the economic survival of the fleet.

Response: NMFS agrees that the range of management measures developed for the Eastern U.S./Canada Haddock SAP Pilot Program is appropriate, that the opportunity that the program affords is important, and has approved this SAP and its proposed measures, with the exception of the proposed use of flounder nets as explained under Comment 27.

Comment 27: Two commenters expressed concern about the proposed gear requirements for this SAP. One commenter stressed the need for high levels of observer coverage in order to carefully monitor the effectiveness of the allowable trawls in minimizing retention of cod. The second commenter suggested that only use of the haddock separator trawl be allowed in the SAP area, rather than the haddock separator trawl and the flatfish net.

Response: NMFS agrees that sufficient levels of observer coverage are necessary in order to monitor the SAP and ensure that the SAP does not undermine achievement of the goals of the FMP. NMFS also agrees with the commenter that suggested that only the haddock separator trawl be allowed to be used in the SAP. Due to concerns regarding GB yellowtail flounder and GB cod bycatch in the SAP area, NMFS has disapproved the use of a flatfish net when fishing in the Eastern U.S./Canada Haddock SAP Pilot Program. Participating vessels may have a flounder net on board the vessel while in the SAP area, provided the flounder net is stowed in accordance with the regulations. A full explanation of the reasons for disapproval of the flounder net is contained in this preamble under ''Disapproved Measures.''

Combined Trips to Western U.S./Canada Area

Comment 28: Seven commenters supported the measure that allows vessels to fish both inside and outside of the Western U.S./Canada Area (but not in the Eastern U.S./Canada Area) on the same trip, but believe that the measure, as written in the proposed rule, did not fully reflect the intent of the Council. Specifically, they stated that the proposed restriction to one entry and exit to/from the Western U.S./Canada Area per trip does not allow sufficient flexibility. One commenter stated that this flexibility is important for the economic survival of the groundfish fleet during the fishery's rebuilding.

Response: The proposed rule would have limited vessels to one entry and exit of the Western U.S./Canada Area per trip in order to enable accurate monitoring of yellowtail flounder landings from inside and outside of the Western U.S./Canada Area. The stock of yellowtail flounder inside the Area is different from the stock outside the Area, and landings must be attributed to the correct yellowtail flounder stock. In response to comments, NMFS re-evaluated its capability to monitor such landings and concluded that it will be able to monitor landings from inside and outside of the Western U.S./Canada Area. Therefore, NMFS has modified the interim final rule to allow vessels unlimited flexibility to fish inside and outside of the Western U.S./Canada Area during a single trip in order to be more fully consistent with Council intent and to provide greater flexibility to the fleet.

General Comments

Comment 29: One commenter supported many of the monitoring and reporting requirements proposed for the B DAS programs proposed under FW 40–A but suggested that, for all programs, vessels be required to report all fish landed and discarded, as well as location fished, through the VMS. In addition, the commenter suggested that, for each area fished, information be reported by 10–minute squares rather than by statistical area.

Response: The VMS reporting requirements implemented by FW 40–A for vessels participating in the three programs are in addition to the existing reporting requirements that such vessels must also comply with. That is, vessels are required to submit Vessel Trip Reports (VTRs) that include information on all species landed and discarded, as well as location fished. The specific VMS requirements implemented by this interim final rule were designed to support the specific real-time reporting demands of the three programs in FW 40–A. The VMS requirements enable real-time monitoring of TACs of either incidental or target stocks. Requiring vessels to report all species and location fished through VMS is not justified because it is not necessary in order to monitor the TACs, would unnecessarily duplicate the information reported through VTRs, and would add additional cost and burden to the vessel owner/operator. A requirement that vessels report by 10–minute square areas was not proposed by the Council and would be inconsistent with the NMFS Northeast Region's current methodology of reporting.

Comment 30: Two commenters stated that sufficient observer coverage is critical to the proposed B DAS programs, and stated that there would be strong incentives for fishermen to misreport discards in these programs. They recommended that the level of observer coverage be between 20 and 50 percent, and requested that NMFS identify the specific level of observer coverage that will be provided to these proposed programs.

Response: NMFS agrees that sufficient observer coverage is critical to the programs implemented by this interim final rule and NMFS intends to deploy a much higher level of observer coverage to the programs than deployed to the fishery at large.

Comment 31: One commenter believes that the TACs for the target stocks are too high for all these B DAS programs, stating that the calculations for the TACs for these stocks were based upon the fishing mortality rates that correspond to Fmsy instead of the lower fishing mortality rates that correspond to OY. The commenter noted that the analysis that identifies target stocks relies on the information contained in Table 40, on page 131 of the FW 40–A document.

Response: NMFS believes that the TACs were calculated in an appropriate manner and are based upon the best

available scientific information. The basis for setting TACs on target stocks is the fishing mortality rate schedule in Amendment 13 to the FMP. Amendment 13 implemented an adaptive F approach to rebuild most stocks and a phased F approach for a few others. The adaptive approach sets F=Fmsy for 2004–2008, and adjusts effort and F in 2009–2014 to ensure rebuilding is achieved. To be consistent with Amendment 13, the FW 40A TACs should be computed using the Fmsy values until 2008. The national standard guidelines state that ''Optimum yield means the amount of fish that will provide the greatest overall benefit to the Nation...'' As a consequence, OY in the context of FW 40A is the yield that results from following the Amendment 13 rebuilding plan and associated F schedule for individual stocks. Using a lower F rate schedule (75 percent of Fmsy) would require changing Amendment 13 rebuilding plans.

Comment 32: One commenter urged NMFS to evaluate carefully the effectiveness of the A DAS management measures adopted in Amendment 13 to determine if they have achieved the expected fishing mortality reductions and suggested that, if such measures have failed to perform as expected, the Regular B DAS Pilot Program must be re-evaluated.

Response: NMFS agrees that it will be important to evaluate the effectiveness of the Amendment 13 management measures and the implications of any management measures implemented subsequent to Amendment 13. Both the regular B DAS Program and the Eastern U.S./Canada Haddock SAP are pilot programs with limited durations for the purpose of evaluating their impact on groundfish stocks of concern. The 2005 biennial review of the groundfish fishery is the appropriate context for such an evaluation.

Comment 33: One commenter suggested that, because barndoor skate and thorny skate may be caught in the B DAS programs proposed under FW 40–A, the interim final rule should include measures to monitor and control the bycatch of barndoor and thorny skates.

Response: NMFS will monitor bycatch of barndoor and thorny skates as well as all other species in the B DAS programs. The vessel reporting requirement in the current regulations require all vessels with a NE multispecies permit to report all species landed and/or discarded. The bycatch of all species, including skates will be controlled indirectly by the target TACs set for the two SAPs proposed in FW 40–A, and by the incidental TACs and DAS restrictions of the Regular B DAS Pilot Program, which will limit the total amount of fishing effort in the programs. FW 40–A includes a Skate Baseline Review, consistent with the requirements of the Northeast Skates Fishery Management Plan, that concludes that the overall impact of the FW 40–A management measures on skates is expected to be low.

Comment 34: The Council commented that the list of stocks of concern should not be codified, noting that, if a stock status changes, a revision to the regulations would be necessary. The Council suggested that, instead, the regulations be revised to require the Regional Administrator to determine the list of stocks of concern, based on current information.

Response: In order to implement the proposed FW 40–A measures, such as incidental TACs, that are specific to specific stocks of concern, the regulations must reference such stocks of concern. A process that would require the Regional Adminstrator to define stocks of concern was neither developed by the Council, nor included in the proposed rule. Because particular management measures are applied on a stock-specific basis to stocks of concern, adjustment to the stocks of concern would require a regulatory change.

Comment 35: The Council commented that FW 40–A allows vessels fishing in the Eastern U.S./Canada Area to fish anywhere in the Eastern U.S./Canada Area using either an A or B DAS, including the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip, providing the SAPs are open. The Council added that, at a minimum, a vessel should be able to fish in both the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip under a B DAS.

Response: Vessels may use either an A or B DAS in the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program. However, should a vessel intend to fish outside either of these two SAPs when fishing in the Eastern U.S./Canada Area, it must fish under an A DAS for the entire trip, despite fishing part of the trip in one of the two SAPs. The reason for this restriction is that with the exception of the Regular B DAS Pilot Program, B DAS may not be used outside of a SAP. FW 40–A contains no justification for, or analysis of the potential impact of allowing vessels to fish under a Reserve or Regular B DAS in the *U.S./Canada Area outside of a SAP or the Regular B DAS Program.*

Comment 36: One commenter suggested that the use of a combination of Reserve B and Regular B DAS be allowed on the same trip into a SAP.

Response: The proposed rule would have prohibited vessels from using a Regular B DAS and Reserve B DAS on the same trip (in a SAP) due to the concern that it would not be technically feasible to administer such a measure. However, based upon further consideration, NMFS has determined that it will be possible to administer this measure and has modified the regulatory text in this interim final rule to allow the use of both types of B DAS on the same trip when fishing in a SAP.

Disapproved Measures

Non-Sector Participants in the CA I Hook Gear Haddock SAP

FW 40–A proposed the CA I Hook Gear Haddock SAP for a directed haddock fishery for both GB Cod Hook Sector members and non-members. Management measures proposed for the non-Sector vessels were considerably different from those pertaining to Sector vessels. The proposed program for non-Sector vessels fishing in the SAP was complex, in that it proposed to: Count cod catch against the SAP's incidental cod TAC only when fishing under a B DAS; allow participants to fish both inside and outside the SAP area on the same trip under different gear restrictions; and allow non-DAS groundfish vessels to participate in the SAP, but did not provide for how specific measures would apply to these vessels. The proposed provisions would be very difficult to enforce and monitor, and were not fully analyzed. Due to the relatively low number of non-Sector vessels (10) that are expected to participate in this proposed SAP, and the relatively high cost to implement the proposed program, the overall cost/benefit ratio would be very high. Furthermore, there appear to be insufficient controls on GB cod mortality for the proposed SAP, and an insufficient analysis of the impact of non-Sector vessels on GB cod. In contrast, the rules that pertain to Sector participants in the SAP are relatively simple (i.e., cod caught under A and B DAS count toward the GB cod TAC, the same gear restrictions apply regardless of where Sector vessels are fishing on a particular trip, only DAS permit categories are eligible to participate in the Sector). Furthermore, all cod caught by Sector vessels would count toward the Sector's allocation of GB cod; therefore, the fishing mortality on GB cod would be fully accounted for. Many commenters expressed concerns

regarding the proposed CA I Hook Gear Haddock SAP. The environmental organizations and hook fishermen that commented were opposed to the fact that GB cod caught in the SAP while fishing on a Category A DAS would not count toward the incidental GB cod Total Allowable Catch (TAC), and noted that there has not been an analysis of allowing the use of A DAS in CA I. Although some commenters expressed broad support for the SAP, the most of the commenters were either against the program or noted qualified support for the program, taking issue with specific aspects of the SAP (e.g., how accounting of the TACs would occur with respect to Category A and B DAS, the different measures proposed for Sector and non-Sector vessels, and the accounting of cod and haddock catches).

Because of the insufficient controls on GB cod mortality, the proposed measures are not consistent with national standard 1 and section 303(a)(1)(A) of the Magnuson-Stevens Act. Because of the high cost/benefit ratio of the proposed SAP, the proposed measures are not consistent with national standard 7. Therefore, NMFS has disapproved the applicability of this measure to non-Sector vessels.

Because of the disapproval of the non-Sector participation in the CA I Hook Gear Haddock SAP, the proposed incidental GB cod TAC allocated under FW 40–A for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP (16 percent of the total GB cod incidental catch TAC; i.e., 12.6 mt, 15.5 mt, and 20.3 mt in Fishing Years 2004, 2005, and 2006, respectively) is reallocated to the Regular B DAS Pilot Program. The FW 40–A document states that: ''The use of Category B (Regular) DAS, outside of a SAP, will be constrained by a ''hard'' incidental catch TAC for stocks of concern. These TACs are reduced by the amount of the total incidental catch TAC that is assigned to SAPs.'' The implication of this text is that the TAC assigned for the Regular B DAS Pilot Program is reduced in order to allocate an incidental TAC to a SAP. Therefore, NMFS concludes that it is appropriate that the Regular B DAS Pilot Program absorb the incidental GB cod TAC originally allocated to the non-Sector vessels in the CA I Hook Gear Haddock SAP. Thus, the total amount of the annual GB cod incidental TAC allocated to the Regular B DAS Pilot Program is increased from the amount specified in FW 40–A (50 percent; 39.5 mt, and 48.5 mt, for fishing years 2004 and 2005, respectively) to 66 percent (52.14 mt and 64.02 mt, for fishing years 2004 and 2005, respectively). The amount allocated to the Eastern U.S./Canada Haddock SAP Pilot Program will remain at 27 mt, 33 mt, and 43 mt for fishing years 2004, 2005, and 2006, respectively (34 percent), because no additional GB cod incidental TAC is being allocated to this program. Although the EA does not explicitly analyze the impact of such a re-allocation (of 16 percent of the GB incidental cod TAC), based upon the FW 40–A analysis of the proposed action and alternatives, NMFS concludes that the biological and economic impacts of the three programs being implemented (combined) will be very similar to those impacts analyzed in FW 40–A. The social impacts will be slightly different, in that no benefits from the CA I Hook Gear Haddock SAP will be received by non-Sector vessels. Because how any reallocation of this GB incidental TAC should be handled was not specified in the proposed rule, NMFS is soliciting comment on this management measure.

Use of Flounder Nets in the Eastern U.S./Canada Haddock SAP Pilot Program

FW 40–A proposed that vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program would be allowed to fish with either a haddock separator trawl or with a flatfish net (consistent with the gear regulations pertaining to the Eastern U.S./Canada Area). Commenters raised concerns about the effectiveness of the required trawl gear, and the need to monitor the program carefully with high levels of observers. One industry member recommended restricting the allowable gear to the haddock separator trawl (i.e., prohibit flatfish nets in this area). This SAP was proposed specifically to allow vessels to target haddock, which the haddock separator trawl is intended to do. Although information on the effectiveness of the haddock separator trawl is still preliminary, data indicate that the design of the haddock separator trawl may be successful in selecting for haddock, and the use of this net is likely to result in a lower level of cod and yellowtail flounder bycatch than would allowance of a flatfish net in this area. Given the fact that, during the 2004 fishing year the yellowtail flounder TAC from the Eastern U.S./Canada Area was harvested at a high rate, allowance of a flatfish net in this area would be problematic. Because the use of the flounder net has not been demonstrated to minimize bycatch of GB cod and yellowtail flounder for vessels targeting haddock, the proposed measure is not consistent with national standard 9 or section 303(a)(11)(A) of the Magnuson-Stevens Act, regarding minimizing bycatch mortality. Further, to allow gear that would result in substantial catches of cod and yellowtail flounder in the U.S./Canada Area, could result in early closure of that area to all groundfish DAS vessels and result in foregone opportunities to harvest haddock, which would be inconsistent with the objectives of the FMP. In light of this information, NMFS has disapproved the use of a flounder net for vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program.

Approved Measures

NMFS has approved the remainder of the measures proposed in FW 40–A. A description of these approved measures follows.

1. Regular B DAS Pilot Program

The Regular B DAS Pilot Program creates opportunities to use B Regular DAS outside of a SAP to target stocks that can withstand additional fishing effort (GOM, haddock, pollock, GOM winter flounder, GB haddock, GB yellowtail flounder, and GB winter flounder). The pilot program will run part of both the 2004 and 2005 fishing years, from November 19, 2004 through October 31, 2005. In order to limit the potential biological impacts of the program, only 1,000 B Regular DAS per quarter (November 19, 2004 through January 2005, February through April 2005, May through July 2005, and August through October 2005) may be allocated for use for the entire pilot program. These DAS will not be allocated to individual vessels, but will be used by vessels on a first-come, first-served basis.

Vessels participating in this program must be equipped with an approved VMS. The vessel owner or operator must notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice will require reporting of the following information: The general area or areas that will be fished (GOM, GB, or Southern New England (SNE)); vessel name; contact name for coordination of observer deployment; telephone number of contact; date, time, and port of departure. Providing notice of the area that the vessel intends to fish will not restrict the vessel's activity to only that area identified for that trip, but will be used to plan observer coverage to ensure statistically robust results. Prior to departing on a trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Pilot Program. There are no specific gear requirements for participation, but vessels will not be

allowed to fish on that trip in a SAP or in a seasonal or year-round closed area, and must comply with the gear requirements of the FMP. Vessels may fish in the Regular B DAS Pilot Program and in the U.S./Canada Management Area on the same trip, provided the vessel abides by the most restrictive regulations that apply. The proposed rule for FW 40–A would have prohibited fishing in the Regular B DAS Pilot Program and the Eastern U.S./Canada Area on the same trip; however, this interim final rule, in order to be consistent with Council intent, allows participation in the Regular B DAS Pilot Program in the Eastern U.S./Canada Area. Because this measure was not included in the proposed rule, NMFS is soliciting additional comment on this management measure. While fishing under a Regular B DAS in this program, Regular B DAS will accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that leaves on a trip at 11 p.m. on the first calendar day and returns at 10 p.m. on the second calendar day, will be charged 48 hours of B Regular DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. Vessels fishing in this program are prohibited from discarding legal-sized regulated groundfish and are limited to landing 100 lb (45.4 kg) per DAS for each of six groundfish stocks of concern (GOM cod, GB cod, American plaice, white hake, SNE/MA winter flounder, and witch flounder), and are limited to a landing limit of 25 lb (11.3 kg) per DAS for each of two stocks of concern (CC/GOM and SNE/MA yellowtail flounder). If a vessel harvests and brings on board legal-sized regulated groundfish in excess of the landing limits, the vessel operator must retain the excess catch and notify NMFS via VMS prior to crossing the demarcation line in order to change its DAS category from a Regular B DAS to a Category A DAS (''DAS flip''). The landing limits will be applied at the end of a vessel's trip. For example, a vessel declared in the Regular B DAS Pilot Program that catches 300 lb (136.2 kg) of cod on the first day of a 2–day trip will not be required to flip immediately to an A DAS on the first day, but, if after completing its fishing trip after 26 hours (being charged 48 hours), the vessel has caught 300 lb (136.2 kg), the vessel will be required to flip to an A DAS prior to crossing the demarcation line (for 2 days of fishing the vessel is only allowed 2–days-worth of cod, or 200 lb). Based upon public comment and to ensure consistency with FW 40–A, this interim final rule has modified the proposed rule language that stated that a vessel must flip its DAS category immediately upon exceeding the landing limit. Instead, this interim final rule requires a vessel to flip its DAS category prior to crossing the VMS demarcation line on its return trip to port. If a vessel flips from a Regular B DAS to an A DAS, it will be charged Category A DAS, which will accrue to the nearest minute, for the entire trip, and will be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Pilot Program limits). In addition, this interim final rule has modified the proposed rule language to resolve a potential problem with the prohibition on discarding. The interim final rule allows discarding of regulated groundfish in instances where mandatory retention would conflict with a prohibition on retention of such species (e.g., the current prohibition on retention of yellowtail flounder from the Western U.S./Canada Area). In order to ensure that a vessel will always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it encounter a groundfish species of concern in an amount that exceeds the trip limit), the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Pilot Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel may fish on that trip under the Regular B DAS Pilot Program would be 5.

NMFS will administer the 1,000 Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS does not serve to reserve a vessel's right to fish under a Regular B DAS. In order to be considered actively fishing in the program, a vessel must both declare their trip via VMS and have crossed the demarcation line. When 1,000 Regular B DAS are used in a quarter, the Regular B DAS Pilot Program will end for that quarter.

In order to limit the potential impact on fishing mortality that the use of Category B DAS (Regular B DAS or Reserve B DAS) may have on groundfish stocks of concern, a quarterly Incidental TAC is set for the groundfish stocks of concern, as summarized in the following table:

INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

Stocks of Concern	Nov 2004 to Jan 2005	Feb 2005 to Apr 2005	May 2005 to Jul 2005	Aug 2005 to Oct 2005
GOM cod	48.5	48.5	63.5	63.5
GB cod	26.07	26.07	32.01	32.01
Cape Cod/GOM yellowtail flounder	9	9	12.5	12.5
American plaice	92.5	92.5	90	90
white hake	38.5	38.5	38	38
Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder	17.5	17.5	49.5	49.5
SNE/MA winter flounder	71.5	71.5	89	89
witch flounder	129.5	129.5	175	175

* Note: The incidental TACs for GB cod specified for the Regular B DAS Pilot Program have been revised from the proposed rule to account for the reabsorption of the GB cod incidental TAC proposed for the non-Sector vessels fishing in the CA I Hook Gear Haddock SAP (see Disapproved Measures for further explanation).

With the exception of white hake, if the incidental TAC for any one of these species is caught during a quarter (landings plus discards), use of Regular B DAS in the pertinent stock area will be prohibited for the remainder of that quarter. Because several stocks of concern may be found in a given stock area, the closure of that stock area to the use of Regular B DAS will result in the prohibition of fishing under a Regular B DAS for all stocks of concern in that stock area, even if there is TAC remaining for some of the stocks of concern for that quarter. All stock areas will reopen for the use of B Regular DAS at the beginning of the subsequent quarter. If the white hake incidental TAC is caught in a quarter, the possession of white hake will be prohibited when fishing under Regular

B DAS in all stock areas for the remainder of that quarter. White hake is treated differently than the other stocks of concern because the stock area for white hake covers all the waters from GOM through SNE, and closure of its stock area to the use of Regular B DAS, rather than prohibiting its possession, would unnecessarily curtail the Regular B DAS Pilot Program. Incidental TACs are not specified for ocean pout, southern windowpane flounder, and Atlantic halibut, three stocks of concern, because the magnitude of the catches of these stocks is considered insignificant.

This program allows the use of Regular B DAS by vessels fishing for species managed under other fishery management plans that require the use of a groundfish DAS, such as monkfish. A monkfish vessel with a limited access monkfish Category C or D permit that fishes under a monkfish DAS, and is therefore required to utilize a NE multispecies DAS, may choose to use a Regular B DAS instead of an A DAS, provided the use of the Regular B DAS is still allowed in the stock area the vessel will be fishing, and provided the vessel adheres to all applicable regulations.

To ensure adequate monitoring of these TACs, vessels fishing in the Regular B DAS Pilot Program are required to report their catch of groundfish stocks of concern, for which there is an incidental TAC, daily through VMS, including the amount of fish kept and discarded, by statistical area fished. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the pilot program measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the pilot program is carried out in a manner consistent with FW 40–A and Amendment 13 objectives, this interim final rule provides that the Administrator, Northeast Region, NMFS (Regional Administrator) may prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program will undermine the achievement of the objectives of the FMP or the Regular B DAS Pilot Program. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

2. CA I Hook Gear Haddock SAP

This SAP allows vessels with a limited access NE multispecies DAS permit that are members of the GB Cod Hook Sector (Sector) to target haddock using longline or tubtrawl gear, when fishing under either a Category A or B DAS within a defined portion of CA I from October 1 - December 31. A haddock TAC of 1,000 mt is specified, and the SAP will close to all participants when the Regional Administrator projects that the TAC (landings and discards from the use of A or B DAS) has been caught. Because the proposed rule specified that only haddock caught under a B DAS would count toward the TAC, and this interim final rule has been modified to reflect Council intent that the all haddock caught in the SAP count toward the TAC, NMFS is soliciting additional comment on this management measure. All GB cod caught, under either an A DAS or B DAS, will count toward the Sector's allocation of GB cod (in contrast to the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program, there is no incidental GB cod TAC specified).

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP must notify NMFS by September 1 (with the exception of the 2004 fishing year) of its intention to fish in the program. For the 2004 fishing year, vessels must notify the NMFS Observer Program by a date set by the Regional Administrator. NE multispecies permit-holders will be notified of the deadline by mail. Notification by vessels intending to participate in this SAP will not have to include specific information about the date of any trip into the SAP; the intent is simply to require that vessels declare their intent for the purposes of providing the NMFS Observer Program with an estimate of the total number of vessels that may participate. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it may not participate in the SAP during that fishing year. For the 2004 fishing year, this notification requirement is waived. If the Regional Administrator, based upon this estimated participation level, or other information, determines that funding is inadequate for the necessary level of observer coverage, the Sector may pay the additional costs required to deploy adequate levels of observers on the Sector vessels participating in this SAP in order to keep the SAP open. In addition, vessels must notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the CA I Hook Gear Haddock SAP and provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. All vessels participating in this SAP must be equipped with an approved VMS. Vessels are required to declare into the SAP program via VMS and specify the type of DAS that will be used, prior to leaving port on a trip into the SAP.

Vessels may use either a Category A or Category B (Regular or Reserve) DAS to participate in the SAP. If fishing on a Category A DAS, vessels may fish inside the SAP and outside the SAP on the same trip. Vessels fishing under a Category B DAS may not fish both inside and outside the SAP area on the same trip. Participating vessels must fish in accordance with the Sector's Operations Plan (e.g., for the 2004 Operations Plan, such vessels are prohibited from discarding legal-sized cod and may fish an unlimited number of hooks). For species other than cod, all vessels are required to comply with the possession and trip limit restrictions currently specified in the regulations. Daily catch reports for each vessel fishing in the SAP must be submitted to the Sector Manager, and the Sector Manager must submit such catch reports daily to the Regional Administrator. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the SAP measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the SAP is carried out in a manner consistent with FW 40–A and Amendment 13 objectives, this interim final rule provides that the Regional Administrator may close the SAP for the duration of the fishing year if it is projected that continuation of the SAP will undermine the achievement of the objectives of the FMP or the SAP. NMFS is soliciting additional comments on the Regional Administrator's authority to close this SAP.

In addition, this interim final rule provides that the Regional Administrator has the authority to close the CA I Hook Gear Haddock Access Area for the duration of the fishing year if it is projected that continuation of the CA I Hook Gear Haddock SAP will undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

3. Eastern U.S./Canada Haddock SAP Pilot Program

The Eastern U.S./Canada Haddock SAP Pilot Program will allow limited access NE multispecies DAS vessels to

target haddock using a Category B DAS from May 1 December 31, in a portion of the Eastern U.S./Canada Area, including the northernmost tip of CA II, provided the vessel fishes exclusively with a haddock separator trawl. The vessel may have a flounder trawl on board, provided the flounder net is stowed in accordance with the regulations. This 2–year pilot program will expire November 30, 2006. In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an incidental GB cod incidental TAC is specified that represents 34 percent of the overall incidental catch TAC for GB cod for fishing years 2004, 2005, and 2006 (27 mt, 33 mt, and 43 mt, respectively, based on current information). The percentages could be changed by a future management action, and the incidental TACs may be recalculated in 2005 to reflect the best information available. When the Regional Administrator projects that the haddock TAC or incidental cod TAC has been harvested (landings and discards), participation in the SAP will close.

The following management measures for this SAP will be the same as the current regulations governing the Eastern U.S./Canada Area: Vessels fishing in this SAP must have an approved VMS and will not be charged steaming time either to or from the Eastern U.S./Canada Area. Vessel owners or operators planning a trip into this SAP are required to notify the NMFS Observer Program at least 72 hours prior to leaving on a trip into the SAP in order to facilitate observer coverage, and must provide the following information to the Observer Program: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. In addition, participating vessels are required to declare into the SAP via VMS prior to departing on a trip into the SAP. Vessels must specify via VMS which areas within the Eastern U.S./Canada Area that they intend to fish in, and the type of DAS that will be used.

This interim final rule also implements measures for this SAP that are different from the regulations governing the Eastern U.S./Canada Area. The cod landing limit is now 1,000 lb (453.6 kg) per trip (Category A or B DAS), regardless of trip length, and discarding of legal-sized cod while fishing under a Category B DAS is prohibited. If a vessel fishing under a Category B DAS exceeds the cod landing limit, the owner or operator must notify NMFS via VMS and ''flip'' to a Category A DAS prior to crossing the vessel demarcation line. Once a vessel flips to a Category A DAS, the vessel must comply with all landing restrictions that apply to Category A DAS. All vessels are required to comply with the haddock possession limits in place at the time of the fishing trip, regardless of the type of DAS the vessel is fishing under. In order to ensure that a vessel always will have the ability to flip to a Category A DAS while fishing under a B DAS, the number of Category B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip into the Eastern U.S./Canada Haddock SAP Pilot Program and has 5 Category A DAS available, the maximum number of Category B DAS that it may fish under the Eastern U.S./Canada Haddock SAP Pilot Program is 5.

FW 40–A changes the cod landing limit for the CA II Yellowtail Flounder SAP from 100 lb (45.4 kg)/DAS and 1,000 lb (454 kg)/trip, to 1,000 lb (454 kg)/trip (and implements a DAS flipping requirement and no cod discard rule), in order to make the cod possession limits the same as those applicable to the Eastern U.S./Canada Haddock SAP Pilot Program. Although the proposed modification to the CA II Yellowtail Flounder SAP cod trip limit, including the no discard and flipping requirements, was clear in the FW 40–A document, the proposed rule inadvertently did not include the no discard and flipping requirements. This interim final rule corrects that error, and includes these requirements in order to be consistent with Council intent. Because the proposed rule did not include the no-discard and flipping requirements, NMFS is soliciting additional comments on this management measure. Vessels fishing in the Eastern U.S./Canada Area may fish in any combination of areas within the Eastern U.S./Canada Area, provided the area(s) is open and the vessel abides by the most restrictive regulations of the areas fished. For example, a vessel could fish in both the Eastern U.S./Canada Haddock SAP Pilot Program, and in the portion of the Eastern U.S./Canada Area that is not within a SAP on the same trip, provided the vessel fishes under a Category A DAS. Vessels fishing under a B DAS may fish in the Eastern U.S./Canada Haddock SAP Pilot Program and in the CA II Yellowtail Flounder SAP, but not in the portion of the Eastern U.S./Canada Area that is not included in these SAPs. Vessels are allowed to transit through CA II in order to enable vessels full access to the Eastern U.S./Canada Area.

Vessels participating in the Eastern U.S./Canada Haddock SAP Pilot Program must comply with the reporting requirements for fishing in the Eastern U.S./Canada Area. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the pilot program measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the pilot program is carried out in a manner consistent with FW 40–A and Amendment 13 objectives, this interim final rule provides that the Regional Administrator may close the pilot program for the duration of a fishing year, if it is projected that continuation of the pilot program will undermine the achievement of the objectives of the FMP or the pilot program. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

4. Combined Trips to the Western U.S./Canada Area

Amendment 13 regulations restricted groundfish DAS vessels that had declared a trip and are fishing in the Western U.S./Canada Area from fishing in areas outside of that area during the same trip, in order to ensure that there is an accurate attribution of landings to the appropriate stock area and to facilitate enforcement of the regulations. The FW 40–A proposed rule would have modified this restriction in order to provide more flexibility to vessels by allowing them to fish both inside and outside the Western U.S./Canada Area on the same trip, but not in the Eastern U.S./Canada Area. However, the proposed rule would have limited vessels to one entry and exit to the Western U.S./Canada Area per trip. Commenters, including the Council, noted that this did not accurately reflect the Council's intent to address this issue. Therefore, this interim final rule was changed in response to these commenters so that vessels are not restricted in the number of times they may enter and exit the Western U.S./Canada Area on the same trip. In order to attribute landings to the appropriate stock accurately and to monitor the U.S. GB yellowtail TAC, in addition to the exiting reporting requirements, vessels must report catches (landings and discards) of yellowtail flounder, by statistical area, when crossing into or out of the Western U.S./Canada Area, and to comply with the most restrictive landing limits associated with the areas fished, as well as all other Western U.S./Canada Area requirements for that trip.

5. NMFS Modification to Administrative Measures

This interim final rule modifies two measures that were included in the proposed rule that did not originate in FW 40–A, but that were proposed by NMFS in order to administer the proposed programs.

The proposed rule specified a VMS polling rate of twice per hour for the proposed CA I Hook Gear Haddock SAP. However, based upon public comment that this requirement is costly and not necessary for enforcement purposes, this rule removes the polling rate requirement of twice per hour for this SAP. This interim final rule modifies the mandatory polling language from the proposed rule to state that double polling may be initiated by NMFS, at its discretion, for vessels fishing in the U.S./Canada Area or in a SAP. If NMFS uses its discretion to initiate double polling, NMFS will pay for the cost of the second poll each hour.

Secondly, the restriction in the FW 40–A proposed rule that would have prohibited vessels from fishing both a Regular B DAS and a Reserve B DAS on the same trip is removed. NMFS initially determined that it would not be possible to administer a program with such flexibility, but subsequently reconsidered its decision, and determined that it would be able to administer a program that allowed switching from a Regular B DAS to a Reserve B DAS in a SAP on the same trip. Because the proposed rule did not include this provision, NMFS is soliciting additional comment on this management measure.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of the proposed management measures proposed for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP, and the disapproval of the flounder net in the Eastern U.S./Canada Haddock SAP Pilot Program. Other changes are technical or administrative in nature, clarify the new management measures, or correct inadvertent omissions in the proposed rule. Due to the number of such changes, and the fact that some measures in the interim final rule different substantively from the measures of the proposed rule, the final rule is published as an interim final rule in order to allow further opportunity for public comment on such measures. These changes are listed below in the order that they appear in the regulations.

In § 648.82, paragraph (e)(3) is revised in to clarify how, under the Regular B DAS Pilot Program, possession limits relate to DAS use.

In § 648.9, paragraph (c)(1)(ii) is revised, in response to commenters, to remove the VMS polling rate requirement of twice per hour in reference to the CA I Hook Gear Haddock SAP, and to clarify that, for vessels fishing in the US./Canada Area specified in § 648.85(a) and for SAPs specified under § 648.85(b), polling twice per hour may be initiated by NMFS. Further explanation of this issue is contained in NMFS' response to Comment 13 in this preamble.

In § 648.14(a)(130), the prohibition regarding fishing inside and outside of the Western U.S./Canada Area is revised in response to comments and to reflect the changes made to the regulatory text at § 648.85(a)(3)(ii)(B) to allow such fishing in an unrestricted manner. Further explanation of this issue is contained in NMFS's response to Comment 28 in this preamble.

In § 648.14(c)(52), the prohibition regarding the A DAS balance restriction in the Regular B DAS Pilot Program is modified to remove redundant text from the prohibition at (c)(63) and to add a prohibition to disallow the use of Reserve B DAS under the Regular B DAS Pilot Program.

In § 648.14(c)(79) a prohibition regarding the discard of cod in the CA II Yellowtail Flounder SAP and DAS flipping provision is added because it was inadvertently omitted in the proposed rule and is necessary to be consistent with Council intent. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.82, paragraph (d)(2)(i)(A) is revised, as requested by commenters, to allow vessels to fish under both a Regular B DAS and a Reserve B DAS on the same trip. Further explanation of this issue is contained in NMFS's response to Comment 36 in this preamble.

In § 648.85, paragraph (a)(3)(ii)(B) is revised to allow vessels to cross in and out of the Western U.S./Canada Area multiple times per trip, as requested by commenters, and in order to be consistent with Council intent. The paragraph is also revised to clarify that the reference to the most restrictive regulation applies to all regulations and not only the yellowtail possession limits, in order to be consistent with Council intent. Further explanation of this issue is contained in NMFS's response to Comment 28 in this preamble.

In § 648.85, paragraph (b)(3)(i) is revised to correct an inadvertent omission from the regulatory text in the proposed rule in order to be consistent with Council intent to include the flipping requirement and prohibition on cod discards in the CA II Yellowtail Flounder SAP. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify the new CA II Yellowtail Flounder SAP cod trip limits and make such limits consistent with the cod trip limits applicable to the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraphs (b)(3)(xi) and (xii) are added to correct an inadvertent omission from the regulatory text in the proposed rule in order to be consistent with Council intent to include the flipping requirement and prohibition on cod discards in the CA II Yellowtail Flounder SAP. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(5)(ii) is revised to reallocate the GB cod incidental TAC from the CA I SAP to the Regular B DAS Pilot Program. Further explanation of this issue is contained in this preamble under Disapproved Measures.

In § 648.85, paragraph (b)(6)(i) is revised, in response to comments, to be consistent with Council intent to allow fishing in the Regular B DAS Pilot Program and in the U.S./Canada Management Area on the same trip, but not in a SAP or in a closed area. Further explanation of this issue is contained in NMFS's response to Comment 2 in this preamble.

In 648.85, paragraph (b)(6)(iii) is revised to clarify that NMFS will notify limited access NE multispecies permit holders of the Regular B DAS Pilot Program quarterly incidental TACs through a letter.

In § 648.85, paragraph (b)(6)(iv)(B) is revised, in response to comments, to clarify that the notification of area to be fished is non-binding.

In § 648.85, paragraph (b)(6)(iv)(E) is revised, in response to comments, to be consistent with Council intent to require flipping prior to crossing the demarcation line. Further explanation of this issue is contained in NMFS's response to Comment 4 in this preamble. This paragraph is also modified in order to allow discarding of regulated groundfish in instances where mandatory retention would conflict with a prohibition on retention of such species.

In § 648.85, paragraph (b)(6)(iv)(I) is revised to clarify that NMFS will notify limited access NE multispecies permit holders of the stock areas associated with the incidental TACs of the Regular B DAS Pilot Program through a letter.

In § 648.85, paragraph (b)(6)(vi) is modified to clarify the basis of the Regional Administrator's authority to close the Regular B DAS Pilot Program. Further explanation of this issue is contained in NMFS's response to Comment 5 in this preamble.

In § 648.85, paragraph (b)(7)(i) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, in order to modify the eligibility criteria of the SAP. Further explanation of this issue is contained in this preamble under Disapproved Measures.

In § 648.85, paragraph (b)(7)(iv)(A) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to modify the DAS use restrictions, and to correct an error in the proposed rule that would have prohibited Sector vessels from fishing inside and outside of the SAP are on the same trip, and to allow vessels to enter and exit the SAP more than once per trip, in order to be consistent with the Council's intent. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(7)(iv)(C) is revised to clarify that for the 2004 fishing year, NMFS will send a letter to limited access NE multispecies permit holders that are members of the Sector to inform them of the date of the notification requirement.

In § 648.85, paragraph (b)(7)(iv)(D) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to modify the observer program funding authority.

In § 648.85, paragraph (b)(7)(iv)(F) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify that only longline and tubtrawl gear are allowed on board participating vessels.

In § 648.85, paragraph (b)(7)(iv)(G) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify the haddock landing limit in the SAP. Further explanation of this issue is contained in NMFS's response to Comment 18 in this preamble.

In § 648.85, paragraph (b)(7)(iv)(H) is revised to modify the reporting requirements, as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP.

In § 648.85, paragraph (b)(7)(iv)(I) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify that all cod caught count against the Sector's allocation of GB cod.

In § 648.85, paragraph (b)(7)(iv)(J) is revised, in response to comments and in order to be consistent with Council intent, to specify that all haddock caught in the CA I SAP (under either an A or B DAS) count against the haddock TAC.

In § 648.85, paragraph (b)(7)(iv)(K) is revised, in response to comments and in order to be consistent with Council intent, to specify that closure of the CA I SAP is triggered by any haddock caught in the SAP. Paragraph (b)(7)(iv)(K) is also revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to remove references to the CA I SAP incidental cod TAC.

In § 648.85, paragraph (b)(7)(v) is modified to clarify the basis of the Regional Administrator's authority to close the CA I Hook Gear Haddock SAP. Further explanation of this issue is contained in NMFS's response to Comment 5 in this preamble.

In § 648.85, paragraph (b)(8)(i) is revised as a result of NMFS's disapproval of the use of the flounder net in the Eastern U.S./Canada SAP Pilot Program. Further explanation of this issue is contained in NMFS's response to Comment 27 in this preamble.

In § 648.85, paragraph (b)(8)(v)(E) is revised as a result of NMFS's disapproval of the use of the flounder net in the Eastern U.S./Canada SAP Pilot Program and to limit the gear allowed on board the vessel. Further explanation of this issue is contained in NMFS's response to Comment 27 in this preamble.

In § 648.85, paragraph (b)(8)(v)(F) is revised to clarify the haddock trip limits that vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program are subject to.

In § 648.85, paragraph (b)(8)(v)(I) is revised in response to comments and in order to be consistent with Council intent, to require flipping prior to crossing the VMS demarcation line, to clarify that the B DAS may be Regular or Reserve, and to clarify when the DAS accrual begins.

In § 648.85, paragraph (b)(8)(v)(L) is modified to clarify the basis of the Regional Administrator's authority to close the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of this issue is contained in NMFS's response to Comment 5 in this preamble.

Classification

The Regional Administrator determined that the management measures implemented by this rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be significant for the purposes of Executive Order 12866.

An EA was prepared for this action and analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. The EA considered the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public comments received during the comment period on the proposed rule. A copy of the Finding of No Significant Impact for FW 40–A is available from the Regional Administrator (see ADDRESSES).

Current regulations allow vessels to use B DAS only in the CA II Yellowtail Flounder SAP, which has been closed for the duration of the 2004 fishing year because the maximum number of allowable trips were taken (and which was limited to vessels that could fish on eastern GB). This interim final rule implements three new programs and relieves the current restriction on the use of Regular B DAS so that vessels can participate in these programs using B DAS. Various sectors of the fishery in diverse geographic areas will benefit from the increased opportunity to use B DAS by being able to take additional fishing trips and to earn additional revenue that would not otherwise be available. The Assistant Administrator for Fisheries, under 5 U.S.C. 553(d)(3), finds that the 30–day delayed effectiveness period is not applicable because this interim final rule relieves restrictions on the NE multispecies fleet.

Public Reporting Burden

This interim final rule contains 13 new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the

collection-of-information requirements. The new reporting requirements and the estimated average time for a response are as follows:

1. VMS purchase and installation, OMB #0648–0202 (1 hr/response);

2. VMS proof of installation, OMB #0648–0202 (5 min/response);

3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB #0648–0202 (5 sec/response);

4. Automated VMS polling of vessel position once per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program OMB #0648–0202 (5 sec/response);

5. Automated VMS polling of vessel position once per hour when fishing in the CA I Hookgear Haddock SAP, OMB #0648–0202 (5 sec/response);

6. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB #0648–0202 (5 min/response);

7. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP, OMB #0648–0202 (5 min/response);

8. DAS ''flip'' notification via VMS for the Regular B DAS pilot program, OMB #0648–0202 (5 min/response);

9. DAS ''flip'' notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program, OMB #0648–0202 (5 min/response);

10. Notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program OMB #0648–0202, (2 min/response);

11. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP, OMB #0648–0202 (2 min/response);

12. Daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program OMB #0648–0212, (0.25 hr/response);

13. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB #0648–0212 (0.25 hr/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall 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.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of FW 40–A. The FRFA describes the economic impacts that this interim final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule to implement FW 40–A (69 FR 55388, September 14, 2004) and the corresponding economic analysis prepared for FW 40–A (FW 40–A RIR). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and FW 40–A are available from NMFS, Northeast Regional Office, and are on the Northeast Regional Office Website (see **ADDRESSES**). A description of the reasons why this action was considered, the objectives of, and legal basis for the interim final rule is found in the preamble to this interim final rule.

Description of and Estimate of the Number of Small Entities to which the Rule would Apply

This interim final rule implements changes with the potential to affect any vessel holding a NE multispecies limited access permit (approximately 1,400 active vessels). It is very likely, however, that these measures will impact substantially fewer than the total number of active limited access multispecies DAS permit holders, based upon historic and recent rates of participation in the fishery, and because the new programs implemented are voluntary in nature, and have some associated regulatory and economic costs. Because the programs are voluntary, no small entity is required to bear any additional regulatory or economic burden unless it chooses to. It is likely that participating vessels will do so on the basis of having decided that the benefits of participating in the program will exceed the costs of participation.

Based upon the information in FW 40–A, approximately 118 or more vessels may participate in the Regular B DAS Pilot Program, 50 vessels may participate in the CA I Hook Haddock SAP, and approximately 86 vessels may participate in the Eastern U.S./Canada Haddock SAP Pilot Program. Up to 236 vessels may choose to fish both inside and outside of the Western U.S./Canada Area on the same trip.

The Small Business Administration (SBA) size standard for small commercial fishing entities of $ 3.5 million in gross receipts applies to limited access DAS permit holders. Data analyzed for Amendment 13 to the FMP indicated that the maximum gross receipts for any single commercial fishing vessel for the period 1998 to 2001 was $ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities in this fishery fall under the SBA size standard for small commercial fishing entities, and there will be no disproportionate impacts between small and large entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Interim final Rule

The measures implemented by this interim final rule include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position when fishing in the Regular B DAS pilot program; (4) automated VMS polling of vessel position when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program; (5) automated VMS polling of vessel position when fishing in the CA I Hookgear Haddock SAP; (6) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (7) revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP; (8) DAS ''flip'' notification via VMS for the Regular B DAS pilot program,; (9) DAS ''flip'' notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program; (10) notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program); (11) revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP; (12) daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program; (13) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area.

It is difficult to estimate accurately the reporting and recordkeeping burden associated under this action since the frequency of participation in the Category B (regular) DAS pilot program, the CA I Hookgear Haddock SAP, the Eastern U.S./Canada SAP Pilot Program, and fishing on a combined trip into the Western U.S./Canada Area will be determined entirely by the vessel owner.

All participants in these programs must use VMS. All vessels that do not currently possess VMS must obtain one in order to participate in the programs implemented in this interim final rule. The cost of purchasing and installing

VMS, along with the associated basic operational costs, have already been considered in previous analyses submitted in accordance with the PRA. Accordingly, the costs associated with the purchase, installation, and operation of VMS units are not summarized here. The new information-collection provisions associated with FW 40A involve the daily electronic reporting of catch and discards of fish by vessels electing to fish in the Regular B DAS Pilot Program, the CA I Hookgear Haddock SAP, the Eastern U.S./Canada SAP Pilot Program, and vessels fishing combined trips in the Western U.S./Canada Area. This information is required to be submitted via VMS. The NE VMS Program will pay for the cost associated with the submission of form-based data (i.e., daily catch reports). As a result, there are no additional costs to the public associated with the daily catch reports.

Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

A Summary of the Issues Raised by the Public Comments in Response to the IRFA, and a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received 14 comment letters on the proposed rule. Of these, there were no comments on the IRFA, and five issues were noted that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule. These comments, and NMFS's responses to these comments are contained in the Comments and Responses section of this preamble (see Comments 2, 6, 28, 29, and 37). A summary of the five economic issues raised, and NMFS's responses, follow:

Issue A: The CA I Hook Gear Haddock SAP may create a derby fishery for haddock and may impact the market for haddock.

Response: The FW 40–A analysis states that the CA I Hook Gear Haddock SAP will improve profitability for vessels allowed to access haddock, and that all participating vessels will likely show positive economic gains. The analysis, however, did not take into account the potential effect that a derby may have on the profitability of trips into the SAP. Vessels may choose when to fish in the SAP in order to minimize the potential for a derby and an impact on haddock prices. Specifically, participating vessels may choose to wait to fish, and balance the risk of fishing at the start of the SAP (i.e., low prices) with the risk of closure of the SAP later (i.e., waiting to fish in hopes of a higher price, and risking the closure of the SAP prior to fishing). NMFS agrees that the profitability may be reduced if a derby fishery results, but it is unknown whether a derby will occur, and what the magnitude of the reduction in profitability might be. Because non-Sector vessels will not be eligible to fish in this SAP as a result of NMFS's disapproval of that measure, the risk of a derby fishery and price impacts is reduced.

Issue B: One commenter noted concern that vessels may target cod in the CA I Hook Gear Haddock SAP due to the fact that the market price of cod is typically higher than the price of haddock, there is a higher incentive to target cod. Another commenter was concerned that vessels would be encouraged to invest in order to fish for cod in the SAP, because, as proposed, there was no restriction on cod harvest in the SAP under Category A DAS.

Response: NMFS agrees with the commenter that there is a price differential between the two species that could create some incentive to target cod. However, the availability of haddock within the SAP, as well as the less restrictive regulations on haddock also should be considered when considering the factors that may influence a vessel operator's decisions. Disapproval of the ability for non-Sector vessels to participate in the SAP reduces the likelihood that vessels will target cod in the SAP.

Issue C: Two commenters supported the proposed regulations allowing vessels the opportunity to fish both inside and outside of the Western U.S./Canada Area on the same trip, and noted that such flexibility is important to the economic survival of the fleet during the rebuilding period. The commenters stated that there should be no limit to the number of entries and exits per trip.

Response: NMFS agrees that such flexibility may decrease the chances of unprofitable trips due to the unavailability of the target species in a particular area, and is implementing unlimited flexbility for trips into the Western U.S./Canada Area.

Issue D: Several commenters stated that all of the programs proposed in FW 40–A are important for the economic survival of the fleet during rebuilding.

Response: NMFS agrees that the programs implemented by this interim final rule will enhance the potential for vessels to become or remain profitable. NMFS approved most of the FW 40–A measures that will allow the targeting of healthy stocks while ensuring that the programs are consistent with the Amendment 13 conservation objectives.

Issue E: Seven commenters were concerned that the proposed rule prohibited participants in the Regular B DAS Pilot Program from fishing in the Eastern U.S./Canada Area on the same trip, and that this restriction would overly restrict opportunities to use Regular B DAS. The commenters stated that this restriction would contribute toward the under-harvest of the U.S./Canada haddock TAC, and prevent realization of optimum yield.

Response: NMFS agrees that allowing vessels to fish in both the Regular B DAS Pilot Program and the Eastern U.S./Canada Area on the same trip will provide additional flexibility for vessels to fish under a Regular B DAS, and enhance economic opportunity.

Economic Impacts Resulting From Disapproved Measures and Changes to the Proposed Rule

As discussed in the preamble of this interim final rule, NMFS has disapproved the proposed management measures that would have allowed non-sector vessels to participate in the CA I Hook Gear Haddock SAP. Although this disapproval will reduce the economic benefits with respect to the proposed rule, the FW 40–A analysis estimated that relatively few non-sector vessels would participate in the SAP (10 vessels; $ 299,674 total surplus). The management measures proposed for non-Sector vessels did not adequately control fishing mortality on GB cod, and the management measures were complex, and therefore difficult to administer and enforce. NMFS concluded that the participation of non-Sector vessels would have yielded relatively little economic benefit in comparison to the high cost of implementation. Such measures would have undermined Amendment 13 objectives and would not have met the objectives of the Magnuson-Stevens Act. The GB cod incidental TAC that was allocated to the SAP is instead allocated to the Regular B DAS Pilot Program, and enable additional economic opportunity. Although none of this TAC is re-allocated to the Eastern U.S./Canada Haddock SAP Pilot Program, vessels participating in the Regular B DAS Pilot Program may also fish in the Eastern U.S./Canada Area (outside of a SAP).As a result of comments on the proposed rule, this interim final rule requires vessels participating in the Eastern U.S./Canada Haddock SAP Pilot

Program to fish with a haddock separator trawl. The haddock separator trawl is more likely to minimize the bycatch of yellowtail flounder and cod than would the flounder net. Allowing only use of the haddock separator trawl is consistent with the objectives of the SAP, as well as the Magnuson-Steven Act requirement to reduce bycatch. Based upon current information, it is unknown whether this requirement will result in additional cost to the potential SAP participants or whether the participants already own the haddock separator trawl. Specifically, it is unknown whether the vessels that may participate in the SAP will need to purchase or construct haddock separator trawls, or whether participants already have these nets as a result of the implementation of Amendment 13. A potential increase in cost to SAP participants is justified based upon the need to reduce bycatch.

As a result of comments on the proposed rule, this interim final rule allows vessels to enter or exit the Western U.S./Canada Area multiple times per trip. Because this measure provides vessel operators the flexibility to change plans and fish in various locations in order to account for changes in the distribution of fish, the measure will reduce the likelihood that vessels will have unprofitable trips.

As a result of comments on the proposed rule, this interim final rule allows vessels to use both types of B DAS (Regular and Reserve) on the same trip. The opportunity to use both types of B DAS provides vessel operators additional flexibility to determine the trip length, and may also enhance trip profitability.

As a result of comments on the proposed rule, this interim final rule allows vessels to fish in the Regular B DAS Pilot Program and in the Eastern U.S./Canada SAP Pilot Program on the same trip. This will provide additional flexibility for vessels to fish under a Regular B DAS, and enhance economic opportunity.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Interim final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

This interim final rule contains programs that will provide small entities with additional fishing opportunities that are intended to mitigate some of the negative economic impacts resulting from the implementation of Amendment 13. This interim final rule is expected to provide this opportunity, while also strictly limiting the increase in fishing mortality on multispecies stocks of concern in order to be consistent with the Amendment 13 rebuilding program.

The Regular B DAS pilot program allows limited access NE multispecies vessels to target relatively healthy groundfish stocks, using Regular B DAS, thereby, relieving some economic constraints caused by the Amendment 13 regulations. A total of 1,000 Regular B DAS per calendar quarter are allocated to the Regular B DAS Pilot Program, beginning November 1, 2004. Incidental TACs for eight groundfish stocks of concern will be set on a quarterly basis, and participating vessels will be required to use a VMS and report catches (both landings and discards) of the stocks of concern via the VMS on a daily basis. The economic impact of the program will depend on the types of fisheries defined by where, when, and how vessels decide to fish, and the resulting catch rates of groundfish stocks of concern. Examination of recorded trips taken in fishing year 2001 indicate that there are opportunities to fish in several different stock areas with low catches of stocks of concern. Average daily revenues from the GB trawl fishery are estimated to be at least $ 2,200. Revenue estimates range from a low of $ 688 (GOM trawl fishery) to a high of nearly $ 3,000 per day (GB trawl fishery). Although these estimates suggest the potential value of being able to use B Regular DAS, the actual economic gains may be very different if vessels pursue fisheries that were not identified in the analysis. In addition, even if these average revenues are accurate estimates, the full benefits from the Regular B DAS Pilot Program may not be realized for two reasons: (1) The incidental catch TACs may limit the duration of the program in each quarter by reducing or eliminating the opportunities to use Regular B DAS; and (2) the DAS flipping requirement may decrease trip profitability or negatively impact the availability of Category A DAS to be used by that vessel elsewhere. Even if the full economic benefits of the programs are not realized, the programs will probably result in some additional revenue. The no action alternative would yield no economic benefits, because without the programs implemented by this interim final rule, no additional fishing opportunities would be created. Therefore, the alternative implemented is favorable when compared to the no action alternative.

The CA I Hook Gear Haddock SAP allows NE multispecies DAS vessels that are members of the GB Cod Hook Sector (Sector) fishing with hook gear the opportunity to access haddock in a portion of CA I from October through December. Approximately 50 Sector vessels may participate in this program. Based upon the proposed haddock TAC of 1,000 mt, and an average of 5,000 lb (2268 kg) of haddock kept per trip, approximately 345 trips could be taken into this SAP. At an average haddock price of $ 1.05 per lb, and average variable costs of $ 364 per day, the potential revenue from fishing in the SAP is $ 1.9 million, with an overall vessel profit of $ 1.2 million (after subtracting variable costs and crew share). Dividing this profit among 50 potential hook vessels results in a vessel profit of $ 24,186. If all participating vessels needed to purchase a VMS system at a cost of $ 3,995 installed, which is at the high end of the cost range for available VMS systems, the profit would be reduced. Regardless of the precise amount of the profit, all participating vessels could benefit from an economic surplus. The no action alternative would yield no economic benefits because no SAP would be implemented, the access to the haddock would not occur, and no additional revenues to the Sector would accrue. Therefore, the alternative implemented is favorable when compared to the no action alternative.

The CA II Haddock SAP Pilot Program, will allow limited access groundfish vessels the opportunity to use Category B DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits will be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels will be subject to the existing requirements of the Eastern U.S./Canada Area, including use of a VMS, and a requirement to use a haddock separator trawl. Total revenue will be limited by the GB cod and haddock TACs already set for the Eastern U.S./Canada Area. The potential revenue of participating vessels under the proposed pilot program was calculated based upon historic landings compositions. The average estimated revenue per vessel is $ 32,095 per trip, and ranges from $ 22,571 to $ 34,586 per trip. Smaller vessels will likely generate less revenue than larger vessels. The average vessel revenue is estimated to be $ 4,527 per day, and ranges from $ 3,060 to $ 4,751

per day. These averages are higher than the average revenues on groundfish trips reported in the break-even analysis in Amendment 13. Because the SAP represents an opportunity for higher revenues, it will provide vessels with greater opportunity to remain profitable. The no action alternative would not implement the SAP and would not provide any opportunity for greater revenues. Therefore, the alternative implemented is favorable when compared to the no action alternative.

This interim final rule will also relieve additional Amendment 13 restrictions in order to allow vessels to fish both inside and outside of the Western U.S./Canada Area on the same trip. Although Vessel Trip Report data indicate that fishing in multiple statistical areas is not a common occurrence, observer data and fisher's comments indicate that some vessels do fish in multiple statistical areas on the same trip. Based upon industry comments, this regulatory change will reduce the risk of an unprofitable trip into the Western U.S./Canada Area. Without such flexibility, if a vessel does not locate a profitable amount of fish in the Western U.S./Canada Area it would not have option of fishing outside the area on the same trip. The no action alternative would prohibit vessels from fishing inside and outside of this area on the same trip, and would not reduce the risk of an unprofitable trip. Therefore, the alternative implemented is favorable when compared to the no action alternative.

FW 40–A also analyzed the aggregate economic benefits of two non-selected alternatives that differ from the selected alternative. Although it was estimated that Alternative 1, which does not include the Regular B DAS Pilot Program, would result in a similar overall economic benefit, the vessels that would benefit from the program would be very different under this alternative, and exclude those vessels not able to fish in the manner required by the two SAPs. The Regular B DAS Pilot Program has very different requirements from the two SAPs, and the participants may be different vessels than those participating in the SAPs. Alternative 2, which proposed the Regular B DAS Pilot Program for a duration of only 6 months, would have resulted in lower economic benefits for those vessels participating in the Regular B DAS Pilot Program when compared to the Pilot Program implemented by this rule, due to the shorter duration. The programs implemented by this rule will provide more diverse and sustained fishing opportunity than the non-selected alternatives. The aggregate economic benefits of the opportunities implemented by this rule provide will include revenue from harvest of the targeted stocks, as well as from harvest under the incidental TACs.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of limited access DAS multispecies permits. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2004.

Rebecca Lent,

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, new definitions for ''DAS flip'' and ''Incidental Total Allowable Catch (TAC)'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and begining fishing under a Category A DAS.

* * * * *

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

* * * * *

■ 3. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(ii) NMFS may initiate at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

■ 4. In § 648.10, paragraphs (b)(1)(vii) and (viii) are added, and paragraph (b)(3)(i) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vii) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6).

(viii) A vessel electing to fish in the Closed Area I Hook Gear Haddock SAP, as specified in § 648.85(b)(7).

* * * * *

(3) * * *

(i) A vessel issued a limited access NE multispecies, monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to do one or more of the following activities:

(A) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section; or

(B) Fish in the Eastern U.S./Canada Area or Western U.S./Canada Area as described in § 648.85(a)(2)(i); or

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(a)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(a)(7).

* * * * *

■ 5. In § 648.14, paragraphs (a)(39), (104), (130), and (c)(8) are revised; and paragraphs (a)(142)–(152) and (c)(50) through (c)(79) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (b)(2)(i).

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

* * * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the restrictions specified under § 648.85(a)(3)(ii)(B).

* * * * *

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program Area specified in § 648.85(b)(8)(ii), unless declared into the area in accordance with § 648.85(b)(8)(v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, exceed the possession limits specified in § 648.85(b)(8)(v)(H).

(146) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (G).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(*2*) through (*4*).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(c) * * *

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

* * * * *

(50) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(6).

(51) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D).

(52) If fishing in the Regular B DAS Pilot Program, fail to comply with the restriction on DAS use as specified in § 648.82(d)(2)(i)(A).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, and other portions of the Eastern U.S./Canada Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod while fishing under a Category B DAS, as described in § 648.85(b)(8)(v)(I).

(55) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the landing limit for cod specified in § 648.85(b)(8)(v)(F).

(56) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), and (I).

(58) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Pilot Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(6)(iv)(G).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv)(A) through (H).

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(i) and (b)(7)(iv)(A) through (H).

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A).

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(E).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(F).

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(G).

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(iv)(H).

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(K) or (b)(7)(v).

(78) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(79) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 48.85(b)(3), fail to comply with the no discard and DAS flip provision specified under § 648.85(b)(3)(xi).

* * * * *

■ 6. In § 648.81, paragraphs (b)(2)(iii), (b)(2)(iv) and (i) are revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified in § 648.85(b)(3) and (8), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(i) *Transiting.* A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

* * * * *

■ 7. In § 648.82, paragraphs (d)(2)(i)(A) and (j)(1)(iii) are revised, and paragraph (e)(3) is added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Pilot Program as specified in § 648.85(a)(6). Unless otherwise restricted under the Regular B DAS Pilot Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b) of this section). Vessels that are required by another fishery management plan (i.e., not the NE multispecies FMP) to utilize a NE multispecies DAS, e.g., as specified under § 648.92(b)(2), may elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(e) * * *

(3) For vessels electing to fish in the Regular B DAS Pilot Program, as specified at § 648.85(a)(6), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation will determine the amount of fish the vessel could legally land.

* * * * *

(j) * * *

(1) * * *

(iii) Method of counting DAS. Unless electing to fish in the Regular B DAS Pilot Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of § 648.82(e)(3), Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

* * * * *

■ 8. In § 648.85, paragraphs (a)(3)(ii), (a)(3)(iv)(A), (a)(3)(v), (b)(3)(i) and (b)(3)(viii) are revised; paragraphs (b)(3)(xi) and (xii) are added, and paragraphs (a)(3)(iv)(C)(*4*), (a)(3)(v)(A) and (B), (a)(3)(vii), and (b)(5) through (8) are added to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(ii) *Declaration.* To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or which specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area the vessel will fish in, and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are

not required to declare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may not fish, during the same trip, outside of the Eastern U.S./Canada Area, and may not enter or exit the Eastern U.S./Canada Area more than once on any trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(*4*) of this section), and the reporting requirements specified in § 648.85(a)(3)(v).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part. A vessel fishing in both the Eastern U.S./Canada Area and either the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip must comply with the cod possession restrictions for those programs for the entire trip, as specified in paragraphs (b)(3) and (8) of this section, respectively.

* * * * *

(C) * * *

(*4*) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(v)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(ii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(vii) *Transiting.* A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) * * *

(3) * * *

(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(3)(xi) of this section, and the DAS balance requirements specified in paragraph (b)(3)(xii) of this section.

* * * * *

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 30,000 lb (13,608 kg) of yellowtail flounder per trip. Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the CA II Yellowtail Flounder SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the CA II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv).

* * * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the Closed Area II Yellowtail Flounder SAP, under a B DAS (Regular or Reserve) may not discard legal-sized cod. If such a vessel harvests and brings on board more legal sized cod than the applicable maximum landing limit per trip specified under paragraph (b)(3)(viii) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category

A DAS, the prohibition on discarding legal-sized cod no longer applies.

(xii) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

* * * * *

(5) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(5), incidental TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod.* With the exception of GB cod, the incidental TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 66 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(6) *Regular B DAS Pilot Program*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Pilot Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Pilot Program and in a SAP on the same trip.

(ii) *Duration of program.* Fishing under this program may only occur from November 19, 2004 through October 31, 2005.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs. NMFS will send letters to limited access multispecies permit holders notifying them of such TACs.

(iv) *Program requirements*—(A) *VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity to only that area on that trip (i.e., the vessel operator may change his/her plans regarding planned fishing area).

(C) *VMS declaration.* To participate in the Regular B DAS Pilot Program under a Regular B DAS, a vessel must declare into the Program via the VMS, prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Pilot Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Pilot Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder and windowpane flounder. Such vessels may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of yellowtail flounder, unless fishing the entire trip in the U.S./Canada Management Area as specified under paragraph (a)(1) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Pilot Program under a Regular B DAS may not discard legal-sized regulated groundfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish is prohibited. If such a vessel harvests and brings on board more legal sized regulated groundfish than the applicable maximum landing limit per trip specified under paragraph (b)(6)(iv)(D) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish no longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Pilot Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(6)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip

under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS program and quarterly DAS limit.* Unless otherwise closed as a result of the harvest of all incidental TACs as described in paragraph (b)(6)(iv)(G) of this section, or as result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, through rulemaking consistent with the Administrative Procedure Act, be prohibited when 1,000 Regular B DAS have been used during the calendar quarter, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Pilot Program. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Pilot Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined below. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

GULF OF MAINE COD STOCK AREA

Point	N. Lat.	W. Long.
GOM1	(1)	70° 00'
GOM2	42° 20′	70° 00′
GOM3	42° 20′	67° 40′
GOM4	43° 50′	67° 40′
GOM5	43° 50′	66° 50′
GOM6	44° 20′	66° 50′
GOM7	44° 20′	67° 00′

GULF OF MAINE COD STOCK AREA—Continued

Point	N. Lat.	W. Long.
GOM8	(2)	67° 00′

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of the south-facing Maine coastline and 67° 00′ W. Long.

(B) *GB cod stock area.* The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

GEORGES BANK COD STOCK AREA

Point	N. Lat.	W. Long.
GB1	(1)	70° 00′
GB2	42° 20′	70° 00′
GB3	42° 20′	66° 00′
GB4	42° 10′	66° 00′
GB5	42° 10′	65° 50′
GB6	42° 00′	65° 50′
GB7	42° 00′	65° 40′
GB8	40° 30′	65° 40′
GB9	39° 00′	65° 40′
GB10	39° 00′	70° 00′
GB11	35° 00′	70° 0′
GB12	35° 00′	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
CCGOM1 ..	(1)	70° 00′
CCGOM2 ..	41° 20′	(2)
CCGOM3 ..	41° 20′	69° 50′
CCGOM4 ..	41° 10′	69° 50′
CCGOM5 ..	41° 10′	69° 30′
CCGOM6 ..	41° 00′	69° 30′
CCGOM7 ..	41° 00′	68° 50′
CCGOM8 ..	42° 20′	68° 50′
CCGOM9 ..	42° 20′	67° 40′
CCGOM10	43° 50′	67° 40′
CCGOM11	43° 50′	66° 50′
CCGOM12	44° 20′	66° 50′
CCGOM13	44° 20′	67° 00′
CCGOM14	(3)	67° 00′

(1) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Nantucket, MA, and 41° 20′ N. Lat.
(3) Intersection of south-facing Maine coastline and 67° 00′ W. Long.

(D) *American plaice stock area.* The American plaice stock area is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Lat.	W. Long.
AMP1	(1)	67° 00′
AMP2	44° 20′	67° 00′
AMP3	44° 20′	66° 50′
AMP4	43° 50′	66° 50′
AMP5	43° 50′	67° 40′
AMP6	42° 30′	67° 40′
AMP7	42° 30′	66° 00′
AMP8	42° 10′	66° 00′
AMP9	42° 10′	65° 50′
AMP10	42° 00′	65° 50′
AMP11	42° 00′	65° 40′
AMP12	40° 30′	65° 40′
AMP13	39° 00′	65° 40′
AMP14	39° 00′	70° 00′
AMP15	35° 00′	70° 00′
AMP16	35° 00′	(2)

(1) Intersection of south-facing Maine coastline and 67° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNE1	35° 00′	(1)
SNE2	35° 00′	70° 00′
SNE3	39° 00′	70° 00′
SNE4	39° 00′	71° 40′
SNE5	39° 50′	71° 40′
SNE6	39° 50′	68° 50′
SNE7	41° 00′	68° 50′
SNE8	41° 00′	69° 30′
SNE9	41° 10′	69° 30′
SNE10	41° 10′	69° 50′
SNE11	41° 20′	69° 50′
SNE12	(2)	70° 00′
SNE13	(3)	70° 00′
SNE14	(4)	70° 00′

(1) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.
(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(4)Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEW1	(1)	70° 00′
SNEW2	42° 20′	70° 00′
SNEW3	42° 20′	68° 50′
SNEW4	39° 50′	68° 50′
SNEW5	39° 50′	71° 40′
SNEW6	39° 50′	70° 00′
SNEW7	35° 00′	70° 00′
SNEW8	35° 00′	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.
(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
WF1	(1)	67° 00′
WF2	44° 20′	67° 00′
WF3	44° 20′	66° 50′
WF4	43° 50′	66° 50′
WF5	43° 50′	67° 40′
WF6	42° 20′	67° 40′
WF7	42° 20′	66° 00′
WF8	42° 10′	66° 00′
WF9	42° 10′	65° 50′
WF10	42° 00′	65° 50′
WF11	42° 00′	65° 40′
WF12	40° 30′	65° 40′
WF13	40° 30′	66° 40′
WF14	39° 50′	66° 40′
WF15	39° 50′	70° 00′
WF16	(2)	70° 00′
WF17	(3)	70° 00′
WF18	(4)	70° 00′

(1) Intersection of south-facing Maine coastline and 67° 00′ W. Long.
(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00′ W. Long.
(4)Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. Long.

(vi) *Closure of the Regular B DAS Pilot Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or Regular B DAS Pilot Program.

(7) *CA I Hook Gear Haddock SAP*—(i) *Eligibility.* Vessels that have been issued a valid limited access NE multispecies DAS permit and that are members of the GB Cod Hook Sector (Sector) are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraphs (b)(7)(iv)(K) or (b)(7)(v) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook 1	41° 25.6′	69° 20.2′
Hook 2	41° 29.2′	69° 08.1′
Hook 3	41° 08.5′	68° 50.2′
Hook 4	41° 06.4′	69° 03.3′

(iii) *Season.* Eligible vessels may fish in the CA I Hook Gear Haddock SAP from October 1 through December 31.

(iv) *Program restrictions*—(A) *DAS use restrictions.* Vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B or Reserve B DAS, in accordance with § 648.82(d)(2), unless otherwise restricted in paragraph (b)(7)(iv) of this section. A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel fishing both inside and outside of the SAP on the same trip may only use a Category A DAS on such a trip, and is subject to the gear and reporting requirements specified in paragraphs (b)(7)(iv)(F) and (H), respectively.

(B) *VMS requirement.* An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* With the exception of the 2004 fishing year, to be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate. This notification need not include specific information about the date of the trip. For the 2004 fishing year, a vessel must notify NMFS by a date set by the Regional Administrator. All eligible NE multispecies permit holders will be sent a letter informing them of the date of this requirement. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(B) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *Observer program funding.* A Sector vessel shall pay for an observer required by NMFS to be taken to participate in the CA I Hook Gear Haddock SAP, if the Regional Administrator determines that the funding of observers by NMFS is inadequate to provide sufficient observer coverage for the total number of vessels participating in the SAP.

(E) *VMS declaration.* To participate in the CA I Hook Gear Haddock SAP, a vessel must declare into the SAP via VMS, prior to departure from port and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and whether it intends to fish outside of the SAP on the same trip, in accordance with instructions provided by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP cannot fish in another SAP specified under this section on the same trip.

(F) *Gear restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, and is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(G) *Landing limits.* A vessel fishing in the CA I Hook Gear Haddock Access Area described in paragraph (b)(7)(ii) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d), and the haddock limits described under 648.86(a).

(H) *Reporting requirements.* The owner or operator of a vessel participating in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit daily reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. For all vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(B) of this section, the reports must include at least the following information: Total

weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded. The Sector Manager will provide daily reports to NMFS containing the including at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(I) *Incidental cod TAC.* There is no incidental cod TAC specified for Sector vessels fishing in the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(J) *Haddock TAC.* The maximum amount of haddock (landings and discards) that may be harvested in a fishing year from the CA I Hook Gear Haddock Access Area by eligible vessels is 1,000 mt. Haddock harvested under either a Category A or a Category B DAS count toward this TAC.

(K) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(J) of this section has been caught by vessels fishing in this SAP, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all eligible NE multispecies vessels.

(v) *General Closure of the CA I Hook Gear Haddock Access Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rule-making consistent with the Administrative Procedure Act, close the CA I Hook Gear Haddock Access Area for the duration of the season, if it is projected that continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

(8) *Eastern U.S./Canada Haddock SAP Pilot Program*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Eastern U.S./Canada Haddock SAP Area.* The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42° 22′	67° 20′ (1)
SAP1	42° 20′	67° 20′
SAP2	42° 20′	67° 40′
SAP3	41° 10′	67° 40′
SAP4	41° 10′	67° 20′
SAP5	42° 10′	67° 20′
SAP6	42° 10′	67° 10′
CAII3	42° 22′	67° 20′ (1)

(1) U.S./Canada maritime boundary.

(iii) *Duration of program.* The Eastern U.S./Canada Haddock SAP Pilot Program is in effect from November 19, 2004 through November 20, 2006.

(iv) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 through December 31.

(v) *Program restrictions*—(A) *DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Area, described in paragraph (b)(8)(ii) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Area and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. The use of a Category A DAS is required because the use of Category B DAS is not allowed in that portion of the Eastern U.S./Canada Area that lies outside of SAPs.

(*4*) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of any of the areas fished for the entire trip.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Area specified under paragraph (b)(8)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Eastern U.S./Canada Haddock SAP Area specified in paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(v)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Haddock SAP Area, with the exception of a flounder net as described in paragraph (a)(3)(iii) of this section, provided the flounder net is stowed in accordance with § 648.23(b).

(F) *Landing limits.* Unless otherwise restricted, NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock

requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught from the Eastern U.S./Canada Haddock SAP Area in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(i)(B) of this section.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod than the landing limit specified under paragraph (b)(8)(v)(F) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip to Category A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod no longer applies.

(J) *Minimum Category A DAS.* To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that the TAC allocation specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Area for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

[FR Doc. 04–25722 Filed 11–17–04; 10:42 am]

BILLING CODE 3510–22–S

Reader Aids

Federal Register

Vol. 69, No. 223

Friday, November 19, 2004

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

63317–63438 1
63439–63916 2
63917–64244 3
64245–64474 4
64475–64636 5
64637–64828 8
64829–65052 9
65053–65366 10
65367–65514 12
65515–67040 15
67041–67262 16
67263–67500 17
67501–67632 18
67633–67804 19

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7838 65041
7839 65043
7840 65045
7841 65047
7842 65049
7843 65051
7844 65511
7845 65515
7846 67501

Executive Orders:
12163 (Amended by EO 13361) 67633
12170 (See Notice of November 9, 2004) 65513
12938 (See Notice of November 4, 2004) 64637
13067 (See Notice of November 1, 2004) 63915
13094 (See Notice of November 4, 2004) 64637
13361 67633

Administrative Orders:
Notices:
Notice of November 1, 2004 63915
Notice of November 4, 2004 64637
Notice of November 9, 2004 65513
Presidential Determinations:
No. 2005-05 of October 20, 2004 63917
No. 2005-06 of October 22, 2004 64475

5 CFR

Proposed Rules:
307 64503

7 CFR

Ch. XXX 64477
27–52 65053
301 ..... 64639, 67041
319 65053
905 64641
1580 63317
1775 65517
1776 67263
1777 65517
1778 65517
1780 65517
1942 65517
1955 65520
3570 65517
4274 65517
4279 64829

Proposed Rules:
923 63958
1005 67670
1006 67670
1007 67670
1260 65386
1717 64689
1782 65546
1951 65546
1955 65546
1956 65546
4280 65554

8 CFR

215 ..... 64477, 65508
235 ..... 64477, 65508
252 ..... 64477, 65508

9 CFR

71 64644
77 64644
78 ..... 64245, 64644, 67501
79 64644
80 64644
85 64644
93 64644

10 CFR

74 64249
431 63574

Proposed Rules:
2 67070
30 67070
40 67070
50 67070
52 67070
63 67070
70 67070
72 67070
73 ..... 64690, 67070
76 67070
150 67070
430 67680

11 CFR

102 63919
106 63919
109 63919

12 CFR

5 64478
19 65067
201 67635
509 64249

Proposed Rules:
615 67070
617 67074

13 CFR

105 63921

14 CFR

23 67636

25.....64651, 67492
39 .....63439, 63440, 63442, 63443, 64251, 64253, 64255, 64482, 64653, 64832, 64835, 64836, 64839, 64842, 64846, 64847, 64849, 64850, 64852, 64854, 64856, 64858, 65520, 65522, 65523, 65528, 65531, 65533, 65535, 67043, 67045, 67047, 67050
71 .....64656, 65069, 65367, 65368, 67052, 67215, 67638
97.....63318, 65538
121.....67492

Proposed Rules:
39 .....63336, 63960, 63962, 63963, 63965, 63968, 64260, 64262, 64263, 64504, 64506, 64510, 64513, 64515, 64517, 64520, 64523, 64525, 64530, 64534, 64537, 64539, 64692, 64695, 64869, 64871, 65059, 65097, 65099, 65101, 65103, 65105, 65388, 65391
61.....67258
71 .....63970, 63972, 63973, 63974, 63975, 63976, 63978, 65107
382.....64364

15 CFR

740 .....64483, 64490, 64657
744 .....64657, 65368, 65539
748.....64483
774.....64483, 64490

Proposed Rules:
732.....65555
736.....65555
740.....65555
744.....65555
752.....65555
764.....65555
772.....65555

16 CFR

603.....63922
613.....63922
614.....63922

Proposed Rules:
Ch. I.....64698
310.....67287

17 CFR

40.....67503
41.....67503
145.....67503
249.....67053

Proposed Rules:
1.....64873
228.....67392
229.....67392
230.....67392
239.....67392
240.....67392
243.....67392
270.....64816
274.....67392

18 CFR

375.....64659

19 CFR

10.....63445
178.....63445

Proposed Rules:
206.....64541
207.....64541

20 CFR

404.....67018

Proposed Rules:
404.....64702, 67039

21 CFR

180.....65540
558.....67263

Proposed Rules:
101.....67513
341.....63482
890.....64266

22 CFR

51.....67053
171.....63934

24 CFR

5.....65024
81.....63580

Proposed Rules:
81.....63576
203.....65324

26 CFR

31.....67054

Proposed Rules:
1 .....64546, 65108, 65555, 67075, 67681
31.....67075

27 CFR

24.....67639

28 CFR

0.....65542

29 CFR

4022.....65543
4044.....65543

Proposed Rules:
458.....64226

30 CFR

Proposed Rules:
56.....67681
57.....67681
58.....67681
70.....67681
71.....67681
72.....67681
75.....67681
90.....67681

33 CFR

117 .....63574, 64494, 64860, 65369, 65371, 67055, 67056
165.....65373
402.....64258
403.....64258

Proposed Rules:
Ch. I.....63979, 65555
110 .....64546, 64549, 64551
117 .....64553, 64875, 67294
165.....64555

36 CFR

7.....65348

Proposed Rules:
7.....65556
1228.....67692
1234.....63980

37 CFR

2.....63320
7.....63320

39 CFR

20.....63946
111.....63452
501.....67508

Proposed Rules:
111.....64877
3001.....65563, 67514

40 CFR

52 .....63321, 63324, 63947, 64259, 64661, 64860, 65069, 65375, 65378, 67058, 67060, 67062, 67645
63.....63452
81.....64133, 64860
131.....67218
180 .....63950, 63954, 65073, 65081
239.....65381
258.....65381
268.....67647
271.....64861

Proposed Rules:
52 .....63981, 64703, 65117, 65393, 65394, 67100, 67694
63.....63489
136.....64704, 64707
194.....64558
268.....67695
271.....64880
720.....65565

41 CFR

Proposed Rules:
51-2.....65395
51-3.....65395
51-4.....65395

42 CFR

403.....66236
405.....66236
410.....66236
411.....66236
412.....66922
413.....66922
414.....66236
418.....66236
419.....65682
424.....66236
484.....66236
486.....66236

44 CFR

64.....63456

Proposed Rules:
67.....63338

45 CFR

Proposed Rules:
98.....64881

46 CFR

501.....64398
535.....64398

Proposed Rules:
531.....63981

47 CFR

1.....65544
13.....64664
73 .....63458, 64681, 64682, 65381, 65382, 65545, 67265, 67266
80.....64664

Proposed Rules:
2.....65570
80.....65570
27.....63459
64.....65401
73 .....65118, 65119, 65120, 67296, 67297

48 CFR

201.....63326
202.....63326
204.....63327
205.....63327
208.....63327, 62328
209.....65088
210.....63328
212 .....63329, 62330, 65089
214.....65089
219.....63328
226.....63327
228.....65090
231.....63331
235.....63327, 65091
252 .....63327, 62328, 65088, 65091
1804.....63458
1815.....63458
1816.....63458
1817.....63458
1823.....63458
1837.....63458
1852.....63458

Proposed Rules:
Ch. 2.....65121
2.....63436
5.....63436
7.....63436
23.....65330
52.....65330
204.....65121
208.....65121
209.....65121
212.....65121
213.....65121
215.....65121
217.....65121
219.....65121
222.....65121
223.....65121
225.....65121
227.....65121
233.....65121
235.....65121
236.....65121
237.....65121
242.....65121
247.....65121
252.....65121
253.....65121

49 CFR

40.....64865
171.....64462
172.....64462
173.....64462
501.....63957
541.....63957
571 .....64495, 67068, 67654, 67660, 67663
574.....64500

Proposed Rules:
171.....65294
172.....65294

173.....65294
175.....65294
229.....63890
238.....63890
379.....63997
381.....63997
385.....63997
390.....63997
395.....63997
571.....65126
1522.....65332
1540.....65258
1542.....65258
1544.....65258
1546.....65258
1548.....65258

50 CFR

300 .....65382, 67267, 67268
622.....65092
635.....67268
648 .....63460, 67284, 67780
660 .....63332, 62333, 64501, 65093, 67285, 67508, 67509, 67510
679.....64683, 67668

Proposed Rules:

17 .....64710, 64884, 64889
223.....65127
229.....65127
600.....67100
622.....67104, 67106
648 .....63341, 63498, 67528
679.....67107

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 19, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—

Michigan et al.; published 10-20-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic herring; published 11-17-04

Northeast multispecies; published 11-19-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

North Carolina; published 9-20-04

FEDERAL RESERVE SYSTEM

Extensions of credit by Federal Reserve Banks (Regulation A):

Primary and secondary credit—

Rates; increase approval; published 11-19-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

B-series combustion heaters, models B1500, B2030, B3040, B3500, B4050, and B4500; published 10-22-04

Becker Flugfunkwerk GmbH; published 10-15-04

Gulfstream; published 11-4-04

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:

Wine; materials authorized for treatment of wine and juice; processes authorized for treatment of wine, juice, and distilling material; published 11-19-04

RULES GOING INTO EFFECT NOVEMBER 20, 2004

POSTAL SERVICE

Domestic Mail Manual:

Priority mail flat-rate box experiment; published 11-2-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Onions grown in—

Idaho and Oregon; import regulations; comments due by 11-22-04; published 9-22-04 [FR 04-21238]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Nursery crop insurance provisions; comments due by 11-22-04; published 10-8-04 [FR 04-22740]

COMMERCE DEPARTMENT

International Trade Administration

Antidumping and countervailing duties:

Certification of factual information during proceedings; comments due by 11-22-04; published 9-22-04 [FR 04-21209]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 11-22-04; published 11-5-04 [FR 04-24760]

West Coast salmon; comments due by 11-26-04; published 11-10-04 [FR 04-25112]

COMMODITY FUTURES TRADING COMMISSION

Review of National Futures Association decisions; comments due by 11-24-04; published 10-25-04 [FR 04-23828]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Engineers Corps

Corps Regulatory Program and new Historic Preservation Advisory Council regulations; historic properties protection procedures; comments due by 11-26-04; published 9-27-04 [FR 04-21540]

EDUCATION DEPARTMENT

Grants:

Credit Enhancement for Charter School Facilities Program; comments due by 11-22-04; published 10-22-04 [FR 04-23746]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial air conditioners and heat pumps; comments due by 11-22-04; published 10-21-04 [FR 04-17731]

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

Water heaters, hot water supply boilers, and unfired hot water storage tanks; comments due by 11-22-04; published 10-21-04 [FR 04-17732]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pulp and paper industry; comments due by 11-23-04; published 11-2-04 [FR 04-24409]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

West Virginia; comments due by 11-26-04; published 10-27-04 [FR 04-23945]

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 11-26-04; published 10-27-04 [FR 04-23948]

Pennsylvania; comments due by 11-26-04; published 10-27-04 [FR 04-23940]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Dimethenamid; comments due by 11-23-04; published 9-24-04 [FR 04-21501]

Lactofen; comments due by 11-23-04; published 9-24-04 [FR 04-21500]

Penoxsulam; comments due by 11-23-04; published 9-24-04 [FR 04-21502]

Tebufenozide; comments due by 11-23-04; published 9-24-04 [FR 04-21499]

Tribenuron methyl; comments due by 11-22-04; published 9-22-04 [FR 04-20982]

Solid waste:

National Environmental Performance Track Program—

Hazardous waste generator facilities; reporting requirements; correction; comments

due by 11-24-04; published 10-25-04 [FR 04-23842]
Solid wastes:
National Environmental Performance Track Program—
Hazardous waste generator facilities; reporting requirements; correction; comments due by 11-24-04; published 10-25-04 [FR 04-23841]
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 11-22-04; published 9-23-04 [FR 04-21387]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FARM CREDIT ADMINISTRATION

Farm credit system:
Loan policies and operations, etc—
Farmers' notes; comments due by 11-24-04; published 10-25-04 [FR 04-23833]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Wireless telecommunications services—
Advanced wireless services; service rules; comments due by 11-23-04; published 11-2-04 [FR 04-24433]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Physicians referrals to health care entities with which they have finanncial relationships
Correction; comments due by 11-23-04; published 9-24-04 [FR 04-21206]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Iowa and Illinois; comments due by 11-22-04; published 10-21-04 [FR 04-23545]
New Jersey; comments due by 11-26-04; published 10-12-04 [FR 04-22848]
Ports and waterways safety:
Puget Sound, WA—
Captain of the Port; security zones; comments due by 11-26-04; published 10-12-04 [FR 04-22744]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Critical habitat designations—
Santa Ana sucker; comments due by 11-24-04; published 10-25-04 [FR 04-23968]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
Research announcements; small business subcontracting plans and publication acknowledgement and disclaimers; comments due by 11-26-04; published 9-27-04 [FR 04-21414]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

POSTAL SERVICE

Domestic Mail Manual:
Checks sent at standard mail postage rates; ancillary service endorsement requirement; comments due by 11-26-04; published 10-27-04 [FR 04-23647]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:
Airport noise compatibility planning; technical amendments; comments due by 11-23-04; published 9-24-04 [FR 04-21298]
Airworthiness directives:
Airbus; comments due by 11-22-04; published 10-7-04 [FR 04-22565]
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
General Electric Co.; comments due by 11-22-04; published 9-22-04 [FR 04-21275]
McDonnell Douglas; comments due by 11-22-04; published 10-6-04 [FR 04-22471]
New Piper Aircraft, Inc.; comments due by 11-22-04; published 9-22-04 [FR 04-21274]
Robinson Helicopter Co.; comments due by 11-22-04; published 9-22-04 [FR 04-21269]
Saab; comments due by 11-26-04; published 10-27-04 [FR 04-24034]
Airworthiness standards:
Special conditions—
Dassault-Breguet Model Falcon 10 airplanes; comments due by 11-22-04; published 10-22-04 [FR 04-23668]
Gulfstream Aerospace Corp. Model G-1159, G-1159A, and G-1159B series airplanes; comments due by 11-26-04; published 10-26-04 [FR 04-23861]
Class D airspace; comments due by 11-25-04; published 9-23-04 [FR 04-21398]
Class E airspace; comments due by 11-22-04; published 10-19-04 [FR 04-23387]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Transportation—
Hazardous materials for transportation in commerce; person who offers or offeror; definition; comments due by 11-23-04; published 9-24-04 [FR 04-21535]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Consolidated return regulations—
Subsidiary stock disposition; extension of time to elect method for determining allowable loss; cross-reference; comments due by 11-24-04; published 8-26-04 [FR 04-19477]
Generation-skipping transfer tax purposes; qualified severance of trusts; comments due by 11-22-04; published 8-24-04 [FR 04-19352]
Real estate mortgage investment conduits—
Interest-only regular interest; comments due by 11-23-04; published 8-25-04 [FR 04-19480]
Original issue discount accrual; comments due by 11-23-04; published 8-25-04 [FR 04-19479]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4381/P.L. 108–392

To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the ''Harvey and Bernice Jones Post Office Building''. (Oct. 30, 2004; 118 Stat. 2245)

H.R. 4471/P.L. 108–393

Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

H.R. 4481/P.L. 108–394

Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

H.R. 4556/P.L. 108–395

To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the ''General William Carey Lee Post Office Building''. (Oct. 30, 2004; 118 Stat. 2249)

H.R. 4579/P.L. 108–396

Truman Farm Home Expansion Act (Oct. 30, 2004; 118 Stat. 2250)

H.R. 4618/P.L. 108–397

To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the ''Anthony I. Lombardi Memorial Post Office Building''. (Oct. 30, 2004; 118 Stat. 2251)

H.R. 4632/P.L. 108–398

To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the ''Archie Spigner Post Office Building''. (Oct. 30, 2004; 118 Stat. 2252)

H.R. 4731/P.L. 108–399

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

H.R. 4827/P.L. 108–400

To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

H.R. 4917/P.L. 108–401

Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

H.R. 5027/P.L. 108–402

To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office''. (Oct. 30, 2004; 118 Stat. 2257)

H.R. 5039/P.L. 108–403

To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the ''Eva Holtzman Post Office''. (Oct. 30, 2004; 118 Stat. 2258)

H.R. 5051/P.L. 108–404

To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''. (Oct. 30, 2004; 118 Stat. 2259)

H.R. 5107/P.L. 108–405

Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

H.R. 5131/P.L. 108–406

Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

H.R. 5133/P.L. 108–407

To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building''. (Oct. 30, 2004; 118 Stat. 2297)

H.R. 5147/P.L. 108–408

To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building''. (Oct. 30, 2004; 118 Stat. 2298)

H.R. 5186/P.L. 108–409

Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

H.R. 5294/P.L. 108–410

John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

S. 129/P.L. 108–411

Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

S. 144/P.L. 108–412

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

S. 643/P.L. 108–413

Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

S. 1194/P.L. 108–414

Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

Last List November 8, 2004

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.