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Presidential Documents

Title 3—

The President

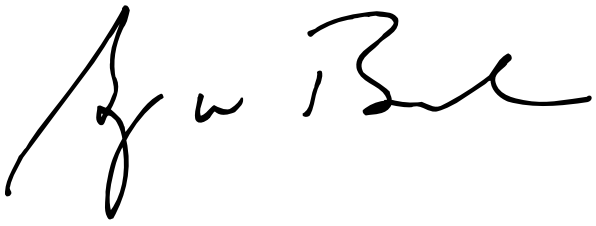
Executive Order 13305 of May 28, 2003

Extension of the President's Information Technology Advisory Committee and the President's Council of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the High-Performance Computing Act of 1991 (Public Law 102–194), as amended by the Next Generation Internet Research Act of 1998 (Public Law 105–305), and in order to extend the life of the President's Information Technology Advisory Committee and the President's Council of Advisors on Science and Technology so that they may continue to carry out their responsibilities, it is hereby ordered as follows:

1. That section 4(b) of Executive Order 13035, as amended, is further amended by deleting ''June 1, 2003,'' and inserting in lieu thereof ''June 1, 2005,''.

2. That section 4(b) of Executive Order 13226 is amended by deleting ''2 years from the date of this order,'' and inserting in lieu thereof ''September 30, 2005,''.



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May 28, 2003.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV03–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2002–2003 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2002–2003 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The final free and restricted percentages are 18.4392 and 81.5608 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2002–2003 marketing year (July 1, 2002, through June 30, 2003). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) estimated 2002–2003 hazelnut production at 18,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 29, 2002, meeting, the Board adjusted the NASS crop estimate up to 19,887 tons by deducting the average crop disappearance over the preceding three years (5.23 percent) and adding the undeclared carryin (2,828 tons) to the 18,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 3,133 tons by taking the difference between the average of the past three years' sales (3,563 tons) and the declared carry-in from last year's crop (430 tons).

The Board computed and announced preliminary free and restricted percentages of 12.6012 percent and 87.3988 percent, respectively, at its August 29, 2002, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (3,133 tons × 80 percent/19,887 tons = 12.6012 percent.) The preliminary free percentage thus initially released 2,506 tons of hazelnuts from the 2002 supply for domestic inshell use, and the preliminary restricted percentage withheld 17,381 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.*, desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2002, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of an additional 15 percent for desirable carryout would not adversely affect the 2002–2003 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. Final free and restricted percentages were recommended at 18.4392 and 81.5608 percent, respectively. The final free percentage released 3,667 tons of inshell hazelnuts from the 2002 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2002–2003 marketing year:

	Tons
Inshell Supply:	
(1) Total production (crop estimate)	18,000
(2) Less substandard, farm use (disappearance; 5.23 percent of Item 1)	941
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	17,059
(4) Plus undeclared carryin as of July 1, 2002, (subject to regulation)	2,828
(5) Supply subject to regulation (Item 3 plus Item 4)	19,887
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,563
(7) Less declared carryin as of July 1, 2002, (not subject to regulation)	430
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	3,133
(9) Desirable carryout on August 31, 2003 (15 percent of Item 6)	534
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)	3,667

Percentages	Free	Restricted
(11) Final percentages (Free percentage = Item 10 divided by Item 5) × 100 (Restricted percentage = 100 minus the free percentage)	18.4392	81.5608
(12) Final free in tons (Item 10)	3,667	
(13) Final restricted in tons (Item 5 minus Item 10)		16,220

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 534 tons for desirable carryout. The total free supply for the 2002–2003 marketing year is 4,097 tons of hazelnuts, which is the sum of the final trade demand of 3,563 tons and the 534 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 20 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $36,500. This is computed by dividing NASS figures for the average value of production for 2000 and 2001 ($27,369,500) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1992–2001, the percentage going to each of these markets was 13 percent (domestic inshell), 41 percent (export inshell), and 46 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. On average, 78 percent of domestic inshell hazelnut shipments occur from October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market.

The estimated inshell trade demand (3,133 tons) and the high level of carryin (2,828 tons) were key market factors leading to the 18.4392 percent final free percentage. Hazelnut production in 2002 was only 2,500 tons more than in 1998, which was the shortest crop in the last ten years. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (i.e., average trade acquisitions of 3,563 tons) equals about 18 percent of the supply (19,887 tons subject to regulation). Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 10 percent of average shipments for the last two years), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Since high production years typically follow low production years (a consistent pattern for hazelnuts), higher production is expected in 2003.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1992 and 2001, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 48 percent and 153 percent, respectively, of the 10-year average tonnage of 32,240. The coefficient of variation (a standard statistical measure of variability; ''CV'') for hazelnut production over the 10-year period is 0.36. In contrast, the coefficient of variation for hazelnut grower prices is 0.16, less than half the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent study from Oregon State University (OSU) estimated the cost of production per acre of hazelnuts to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded the OSU estimate twice between 1995 and 2000. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was $1,552 (1997) and the lowest was $561 in 1996. Without the stabilizing impact of the order, growers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability, and help to moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2002–2003 hazelnut crop. However, without any regulations in effect, the Board believed that the industry would oversupply the inshell domestic market. Although the 2002–2003 hazelnut crop is much smaller than last year, the release of 18,000 tons on the domestic inshell market would cause producer returns to decrease drastically, and completely disrupt the market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts

produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 4 percent of the world's hazelnut production.

During the 2001–2002 season, 78 percent of the kernels were marketed in the domestic market and 22 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a 10-year average of 5,436 tons out of total average exports of 12,132 tons. Recent years have seen a significant shift in export destinations. Inshell shipments to Europe totaled 4,526 tons in the 2001–2002 season, representing 17 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 73 percent of total exports of 25,868 tons in the 2001–2002 season. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, as mentioned earlier, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 29, and November 15, 2002, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on March 12, 2003. The Board's staff mailed copies of this rule to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended May 12, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 11733, March 12, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 68 FR 11733 on March 12, 2003, is adopted as a final rule without change.

Dated: May 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–13520 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV03–985–2 FR]

Spearmint Oil Produced in the Far West; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee locally administers the marketing order, which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Ave, Suite 385, Portland, OR 97204; Phone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is

intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning on June 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled.

The Far West spearmint oil marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate was formulated and discussed in a public meeting. Thus, all directly affected persons had an opportunity to participate and provide input.

For the 2000–2001 and subsequent marketing years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 26, 2003, and unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $191,300. The recommended assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. Because spearmint oil assessable poundage and assessment income have been lower than estimated the last two marketing years, the Committee has had to use reserve funds to cover its budgeted expenses. To keep its reserve fund at an acceptable level, the Committee recommended the $0.01 increase and reduced its expenses for 2003–2004.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The Committee estimates that its monetary reserve will be approximately $72,394 at the beginning of the 2003–2004 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expenses (§ 985.42).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are 7 spearmint oil handlers subject to regulation under the marketing order, and approximately 98 producers of Class 1 (Scotch) spearmint oil and approximately 100 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 11 of the 98 Scotch spearmint oil producers and 13 of the 100 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential

cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound. The assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. The quantity of assessable spearmint oil for the 2003–2004 marketing year is estimated at 1,697,200 pounds. Thus, the $0.10 rate should provide $169,720 in assessment income. This, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of $173,700, which included a decrease to committee expenses, and increases in administrative and market research and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. The proposed budget includes an expenditure reduction of $17,600 and no further alternative expenditure levels were discussed. The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. This, together with interest and other income, is approximately $280 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming 2003–2004 marketing year indicates that the producer price for the 2003–2004 marketing year could be about $9.13 per pound. Therefore, the estimated assessment revenue for the 2003–2004 marketing year as a percentage of total producer revenue could be about 1.1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on April 22, 2003 (68 FR 19755). A copy of the rule was provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 20-day comment period ending May 12, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–04 marketing year begins June 1, 2003, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2003, an assessment rate of $0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: May 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–13521 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–1 FIR]

Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with change, an interim final rule that modified the requirements of the raisin diversion program (RDP) authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). The changes are intended to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes include adding an additional date by which the RAC can increase the tonnage allotted to a RDP; adding authority for the RAC to limit the amount of tonnage allotted to vine removal; modifying the application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allowing partial production units to be included in a RDP and adding authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a program's provisions by USDA.

EFFECTIVE DATE: June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule continues in effect modifications to the administrative rules and regulations regarding the RDP specified under the order. The changes are designed to provide the RAC with additional flexibility when implementing a RDP, and provide the opportunity for all producers to participate in a program. The changes include: Adding an additional date by which the RAC can increase the tonnage allotted to a RDP; adding authority for the RAC to limit the amount of tonnage allocated for vine removal; modifying application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; and allowing partial production units to be included in a RDP and allowing the RAC to specify provisions to maintain the integrity of the program.

These regulatory changes were recommended by the RAC at meetings on October 15, and December 12, 2002, by a near unanimous vote. A member voting no expressed concern with the definition of partial production unit as proposed by the RAC.

Given the above changes, appropriate revisions were made to the text of § 989.156 to include specific references to approval of USDA for a program's provisions.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to reserve pool equity holders.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Pursuant to these sections, the RAC must meet during the crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in

the RDP must submit an application to the RAC.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC, and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler, as if the handler had bought raisins directly from a producer.

RAC Recommendation

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC also has been reviewing options to help the industry address these issues through the marketing order. The RAC proposed some requirements for a 2003 RDP at a meeting on October 15, 2002. Additional revisions were proposed by the RAC's Executive Committee on October 24, and November 4 and 26, 2002. The RAC met on December 12, 2002, to review the Executive Committee's changes and proposed program. The RAC ultimately recommended specific changes to the order's regulations regarding the RDP that could apply to any future RDP. The changes were designed to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes are described in the following paragraphs.

Additional Date for Increasing the RDP Tonnage

With the exception of the 2002–03 crop year, § 989.56(a) of the order and § 989.156(a)(1) of the regulations specify that the RAC must announce the quantity of tonnage allotted to a RDP on or before November 30 of each crop year. Section 989.156(a)(1) specifies further, with the exception of the 2002–03 crop year, that the RAC may announce an increase in the tonnage eligible for a RDP on or before January 15 of each crop year. The November 30 deadline in the order was suspended, and the November 30 and January 15 dates in the regulations were extended for the 2002–03 crop year to dates specified by the RAC (67 FR 71072, November 29, 2002) to allow time for review and modification of the RAC's proposed RDP changes.

The RAC recommended that the regulations be modified to allow the RAC an additional opportunity to increase the tonnage eligible for a RDP on or before May 1 of each crop year subsequent to 2002–03. This will allow the RAC the opportunity to allocate additional tonnage to a RDP in years when raisin deliveries may be slow, or when additional reserve raisins may be available later during the crop year. Section 989.156(a)(1) was modified accordingly.

Limit on Tonnage Allocated for Vine Removal

Section 989.156(h)(1) specifies that the RAC may limit a RDP to vine removal only. This requirement remains unchanged by this rule. However, the RAC proposed having the ability to cap, or limit, the amount of tonnage allocated to a RDP for vine removal. For example, the RAC may allocate 100,000 tons to a RDP, of which 50,000 tons would be allotted for vine removal only. Under this scenario, the remaining 50,000 tons would be available for spur pruners (or producers who opted to reduce their production by methods other than vine removal). As described later in this rule, the RAC recommended revising the regulations to allow for the allocation of tonnage to spur pruners pro rata to all who applied. Imposing a cap on vine removers would ensure that a certain amount of tonnage would be available for a spur prune program. This additional requirement is specified in § 989.156(a)(2).

Additional Agreement for Vine Removers Who Replant

The RAC recommended that authority be added for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs. Producers who agree to remove vines, but replant within a specified number of years (maximum of 5 crop years), as determined by the RAC, with the approval of USDA, must agree to compensate the RAC for appropriate damages for the tonnage specified in the applicable diversion certificate. The payment of damages would be appropriate because replanting would cause serious damage to a RDP and the raisin industry. On January 29, 2003, the RAC recommended, and USDA subsequently approved, imposing a 5-year restriction on replanting as a feature of a 2003 RDP for NS raisins (35,000 tons of 2002 reserve raisins were allocated to a 2003 RDP). This should remove acreage from production for at least 8 crop years because it takes about 3 years for a new vineyard to have significant production. Adding this requirement to a RDP is expected to help the industry reduce its burdensome oversupply.

Accordingly, the producer application for a 2003 RDP was modified to condition a vine removal program with a producer's agreement not to replant. Producers who elect to participate in a RDP and later replant will be required to compensate the RAC for damages at a rate of $700 per ton, as recommended by the RAC and approved by USDA, for the tonnage specified on the diversion certificate.

The interim final rule specified that funds collected by the RAC for such damages will be deposited in the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool. An addition has been made to this final rule, based on a comment received. The comment is addressed in detail later in this rule. Specifically, if the applicable reserve pool has been closed and equity distributed, damages collected will be deposited in the reserve pool for the crop year in which such monies are received. If no reserve pool exists for that year, then damages collected will be deposited in an open reserve pool of the crop year closest to the applicable diversion pool. Finally, as stated in the interim final rule, if a determination is made by the RAC that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the RAC's decision in accordance with paragraph (m) of § 989.156.

Application of Production Cap

Under a RDP, the reserve tonnage allocated to a program becomes part of the following year's supply. For example, if 100,000 tons of 2002–03 reserve raisins were allocated to a RDP, that tonnage would be issued to RDP producers in the fall of 2003 in the form of certificates from the RAC. The certificates represent actual raisins. The 100,000 tons would then be included in the 2003–04 crop estimate. A higher crop estimate reduces the free tonnage

percentage. Since producers are paid by handlers for their free tonnage raisins, a lower free tonnage percentage reduces producer returns. The industry has had concerns with the impact of large diversion programs on the following year's free tonnage percentage.

As a result, the RAC recommended that the concern about large RDP's adversely impacting the following year's free tonnage percentage be addressed through application of the production cap. A production cap is a limit on the yield per acre that is permitted under a RDP. Section 989.56(a) specifies that the RAC must announce the production cap at the same time it announces a RDP for the crop year. The section specifies further that the production cap shall equal 2.75 tons per acre, unless it is lowered by the RAC, with approval of the Secretary.

The RAC proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal) to lessen the adverse effects a large RDP would have on the following year's free tonnage percentage. For example, the RAC could specify that the production cap applicable to 2003 spur pruners would equal the lesser of 2.75 tons per acre, or 80 percent of the 2002 yield per acre on that production unit. The following table illustrates this further.

2002 yield per acre (tons)	Application of production cap (tons)
5.0	2.75 (2.75 cap)
4.0	2.75 (2.75 cap)
3.5	2.75 (2.75 cap)
3.4375	2.75 (both 80% and 2.75)
3.2	2.56 (80% cap)
3.0	2.4 (80% cap)
2.5	2.0 (80% cap)
2.0	1.6 (80% cap)
1.5	1.2 (80% cap)
1.0	0.8 (80% cap)

Participants who agree to remove vines would not be subject to the percentage limit on the production cap because of the effectiveness of vine removal in reducing production capacity. However, such participants would remain subject to the established production cap. This additional flexibility is specified in § 989.156(a)(2).

Allocation of Tonnage for Spur Pruners (Includes Methods of Diversion Other Than Vine Removal)

Prior to implementation of the interim final rule, § 989.156(d) required that, if reserve tonnage existed after the allocation of diversion tonnage had been made to all eligible producer applicants who agreed to remove vines, a lottery would be held to allocate remaining tonnage. The RAC recommended that it have the flexibility to allocate such tonnage either pro rata to remaining applicants or by a lottery for complete production units to remaining applicants if a minimal amount of tonnage remains. Allocating tonnage pro rata will provide the opportunity for all producers to participate in a spur prune program. Accordingly, §§ 989.156(a)(2) and 989.156(d) were modified to incorporate this option.

Inclusion of Partial Production Units

As described above, the RAC contemplates future RDP's where the tonnage allotted to applicants who agree to spur prune vines (or divert production using a method other than vine removal) may be done on a pro rata basis. Such producers would spur prune only a portion of a production unit, or a ''partial'' unit.

In 1997, the RAC recommended that partial production units no longer be accepted into the RDP, and § 989.156 was modified accordingly (62 FR 60764; November 13, 1997). This action was taken because the RAC had concerns that some producers were removing weak vines in a production unit and getting credit under a RDP for an inflated amount of tonnage.

To implement the RAC's proposal for allocating tonnage on a pro-rata basis to applicants who agree to spur prune their vines, and help maintain integrity of the program, the RAC recommended that a partial production unit must have two permanent, contiguous (natural or man-made) boundaries. This should eliminate the ability for producers to select certain rows of weak vines and artificially inflate the tonnage on their unit. This definition was added to paragraph (o) of § 989.156. Additionally, the words ''or portion thereof'' were added to paragraphs (h) and (i) of § 989.156 to indicate that partial units may be included in a RDP.

Finally, the RAC recommended that it be given the authority to specify provisions for a partial production unit to maintain the integrity of the program. For example, the RAC indicated that it might want to specify that only a certain corner of each vineyard may be accepted into a spur-prune RDP to further alleviate the problem of a producer choosing the weakest corner of his/her vineyard, and to help maintain the integrity of the RDP. Accordingly, paragraph (a) of § 989.156 was modified to reflect that the RAC may limit a program that is applicable to partial production units by specifying the portion of the production units that can be diverted, or like provisions to maintain the integrity of the program.

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The California Agriculture Statistics Service (CASS) forecasted the 2002 production of raisin variety grapes at 2,550,000 tons (green). This is a relatively high level of production. The record high production occurred in 2000, at 2,921,000 tons (green).

Producers market raisin variety grapes in the fresh market (table), wine or juice market (crush), or dry them into raisins. Typically, 67 percent of the crop is dried for raisins, 20 percent crushed for wine and juice, and the remaining 13 percent of the crop is utilized in fresh and canned sales. These outlets provide a hedge for producers attempting to minimize risk from bad weather (rain) or a depressed market (concentrate, wine, or raisins).

For the week ending March 22, 2003, seasonal deliveries for all varietal types of raisins were at 421,725 tons (381,992 tons for Natural (sun-dried) Seedless (NS)). This will be the third consecutive year that raisin production has been

above 400,000 tons. Combined domestic and export demand (shipments) is estimated at approximately 300,000 tons. These levels of production, combined with stable demand have resulted in a large build-up of free and reserve carryin inventories.

At the beginning of the 2002–2003 crop year (August 1, 2002), the RAC reported that 48,749 tons of NS raisins were currently being held in the reserve pool from the 2001 crop. In addition, 153,152 free tons were held by handlers in inventories. With total dried production initially estimated at 446,449 tons, and combined free and reserve inventories at 201,901 tons, the industry had over 600,000 tons of raisins.

This type of surplus situation leads to serious marketing problems. Handlers compete against each other in an attempt to sell more raisins to reduce inventories and to market their crop. This situation puts downward pressure on producers' prices and incomes.

In addition, it has been reported that the wineries offered $65 a ton for green NS raisins for crushing. In recent years, wineries have typically offered prices ranging from $164 to $200 per ton. The wine price for NS grapes was lowered to $125 per ton in 2000 and fell to $85.70 per ton in 2001. This has resulted in more raisin variety grapes being dried for raisins, which has added to the surplus situation in the raisin market.

Typically, 500,000 tons of raisin variety grapes are delivered to the wineries for crushing. In 2001, this volume decreased to 261,000 tons. The 2002 crop year deliveries for crushing are expected to remain low.

Surplus situations are often the result of increased bearing acres, which are encouraged by high prices. However, bearing acres for raisin variety grapes have fallen from 280,000 acres in 2000 to 273,000 acres in 2002. In addition, 27,000 acres were idle due to the raisin diversion program. The increased raisin production is largely the result of producers deciding to dry more grapes for raisins due to the low crush prices and increased yields. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply. The RAC's recommended changes were designed to add flexibilities to the RDP, and provide the opportunity for all producers to participate in a program. The overall impact of a RDP with the recommended flexibility is expected to impact small and large entities positively by reducing the industry's production capacity, and by bringing supplies in closer balance with market needs.

This rule continues to revise § 989.156 of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. Specifically, this rule continues to revise the requirements of a RDP by: Adding an additional date by which the RAC can increase the tonnage allotted to a RDP; add authority for the RAC to limit the amount of tonnage allocated for vine removal; modifying application of the production cap for spur pruners under a RDP; adding authority for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs; revising the requirements for prioritizing and allocating tonnage for spur pruners under a RDP; allowing partial production units to be included in a RDP and adding authority for the RAC to specify provisions to maintain the integrity of the program; and specifying in the regulations the approval of a RDP's provisions by USDA. Authority for these changes is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, these changes are designed to provide the RAC with additional flexibility when implementing a RDP. Adding the May 1 date whereby the RAC may increase the tonnage allotted to a RDP will give more producers an opportunity to participate in the program. The changes regarding the way tonnages are allocated under a program (cap on vine removal that will allow a specified amount of tonnage available for spur pruners, and allocating spur prune tonnage pro rata to all applicants) are intended to provide the opportunity for all producers to participate at some level in a RDP. Thus, all producers could potentially have the opportunity to earn some income for curtailing their production.

With regard to cost, based on past RDP's, the RAC estimates that compliance and verification costs associated with a RDP average about $150 per production unit. Using an estimate of 1.25 production units per RDP producer application, if all 4,500 producers participated in a RDP, there could potentially be about 5,625 production units in a program. Thus, using the $150 per unit figure, compliance and verification costs for the program could average about $843,750. The overall impact of the changes is difficult to quantify. However, if a RDP implemented using the increased flexibility helps bring supplies into balance with market needs over time, the benefits for both small and large entities would be positive. When supplies and market needs are in balance, experience has shown that producers and handlers both benefit, regardless of size.

Regarding alternatives to the RAC's recommendation, the industry has been considering various options and programs to help alleviate the severe economic conditions adversely impacting both raisin producers and handlers. Industry groups outside of the RAC are seeking financial assistance under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). The RAC also has a subcommittee that is reviewing long-term solutions to help the industry that would require formal rulemaking changes to the marketing order. RAC members have been seeking short-term solutions available through the existing order, or slight modifications thereto. Thus, the changes incorporated through the interim final rule were designed to add flexibilities to the RDP and provide the potential for all producers to participate in a program. The RAC hopes to utilize the RDP to help alleviate the industry's oversupply situation.

The RAC and Executive Committee did consider options to some of the features recommended by the RAC. One option concerned an alternative to application of the production cap. That is, specifying that producers who agreed to spur prune their vines would have to spur prune an additional percentage of their acreage that would not be reflected on their diversion certificates. However, the order does not provide authority for the application of a ''multiplier'' in this fashion to vineyards that were spur pruned. The RAC ultimately proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal).

At its meetings, the Executive Committee also considered other dates besides May 1 whereby the RAC could increase the tonnage allotted to a RDP. An April date was contemplated, but not proposed because industry members would rather be past the threat of an April frost before making a decision whether to add tonnage to a RDP. Thus, the May 1 date was deemed appropriate and ultimately proposed by the RAC.

There was some discussion by industry members about partial

production units. Some members questioned whether authority for partial units should be added back into the order's regulations, and some questioned whether a partial unit should be required to have two permanent, contiguous boundaries. There was also concern that a producer could spur prune a corner of his/her vineyard, redesign his/her trellising system to provide for significantly increased yields, and contribute to future oversupplies. After much discussion, the majority of RAC members concurred with allowing partial production units in a RDP, and limiting such a unit to one that has two permanent, contiguous boundaries.

This rule does not add measurably to the current burden on reporting or recordkeeping requirements for either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the RDP application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, this action was reviewed by the RAC's Administrative Issues Subcommittee October 7 and 15, and December 10 and 12, 2002, by the RAC's Executive Committee on October 24, and November 4 and 26, 2002, and by the RAC on October 7 and 15, and December 12, 2002. All of these meetings where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on January 28, 2003 (68 FR 4079). Copies of the rule were mailed by the RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended March 31, 2003. One comment was received. The commenter supported the changes, but suggested some minor modifications.

The commenter suggested adding language to § 989.156(a)(1) to clarify the authority of the RAC to make program modifications should the RAC announce an increase in eligible tonnage in a RDP on or before May 1. The commenter added that additional clarification may not be necessary because of existing language in § 989.156(r). That section contemplates that modifications can be made to the terms and conditions of a RDP after a producer's application has been approved, and requires producers to be notified of the changes and given the opportunity to agree with them or withdraw from the program. USDA concurs that authority for program modifications already exists in § 989.156(r) and no further clarification is necessary.

The second suggested language change by the commenter was to add ''raisin-variety'' prior to the word ''vines'' in § 989.156(a)(2)(iv) that refers to producers who replant vines. USDA believes that this clarification is not needed because all references to vines in § 989.56 are within the context of a raisin diversion program and are intended to refer to raisin-variety vines.

The third suggested change by the commenter was to add language as to how to handle damages that may be collected should a producer replant raisin-variety vines on the approved production unit within the announced period of up to 5 years. A 5-year period was announced for the 2003 RDP. The 2003 RDP requirements require approved applicants to remove their vines by June 1, 2003. Producers may not replant raisin variety vines on approved production units until June 1, 2008. The interim final rule stated, in § 989.156(a)(2)(iv), that any damages collected for a vine replanting violation must be deposited to the reserve pool fund of the reserve pool applicable to the particular RDP. In the case of the 2003 RDP, the 2002 reserve pool could not be closed until June 1, 2008, to ensure that no vine removal violations had occurred. Moreover, any collection process for a late occurring violation could cause a pool to remain open even longer.

Normally, reserve pools are closed and equity is distributed within 2 years of the crop year in which the reserve was established. The commenter suggested that damages collected be deposited in the ''reserve pool for the crop year in which the monies are received, or if there is no reserve pool for the current year, then to the next prior year for which there was a reserve pool.''

USDA concurs that a reserve pool need not remain open just because a potential vine replanting violation might occur. However, based on discussions with RAC staff, USDA has concluded that, if the applicable pool has been closed, damages collected should be deposited in the next open reserve pool for the crop year closest to the RDP pool. This distribution is more orderly. For example, under the 2003 RDP, producers who removed vines cannot replant until 2008. Raisins from the 2002 reserve pool have been allocated to the 2003 RDP. If damages are collected in 2008, and the 2002 pool is closed, but the 2006 and 2007 reserve pools are open, such damages would be deposited in the 2006 pool. Accordingly, language is added to § 989.156(a)(2)(iv) to state that if the applicable RDP reserve pool has been closed and equity distributed, then any damages collected for that RDP shall be deposited in the next open reserve pool of the crop year closest to the applicable diversion pool.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the RAC's recommendation, comment received, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (68 FR 4079; January 28, 2003), with changes, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003 RDP is well underway and this action should be made effective as soon as possible.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 4079 on January 28, 2003, is adopted as a final rule, with the following changes:

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 989.156, paragraph (a)(2)(iv) is revised to read as follows:

§ 989.156 Raisin diversion program.

(a) * * *

(2) * * *

(iv) Limit participation in a vine removal program to producers who agree not to replant raisin-variety vines for a period not to exceed 5 years and who agree to compensate the Committee for appropriate damages if raisin-variety vines are replanted. Damages collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool: *Provided,* That, if such reserve pool has been closed and equity distributed, damages collected shall be deposited in the next open reserve pool of the crop year closest to the applicable diversion pool. If a determination is made by the Committee that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the Committee's decision in accordance with paragraph (m) of this section;

* * * * *

Dated: May 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–13518 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AG94

Crop Insurance Linkage

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is removing obsolete references from its regulations requiring producers to obtain at least a catastrophic level of crop insurance for each crop of economic significance in order to be eligible for payment under certain programs, which are no longer in operation.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of final rule making regarding the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Final Rule

The Commodity Credit Corporation is amending its regulations at 7 CFR part 1405 to remove obsolete requirements that crop insurance be obtained in order to be eligible for USDA benefits under some programs. Section 508(b)(7) of the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1508(b)(7)) provided that in order to be eligible for payments under the Agricultural Market Transition Act (7 U.S.C. 7201 note) (AMTA) the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. The AMTA programs, which included production flexibility contracts for wheat, feed grains, and upland cotton, 1996-through 2002-crop loans and loan deficiency payments for grains and similarly handled commodities and cotton, and the Sugar and Peanut Programs, ended September 30, 2002. The regulations for those programs were contained at 7 CFR parts 1412, 1421, 1427, 1435, 1443 and 1446 and were replaced by regulations for new programs under the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 note) (the 2002 Act). The 2002 Act did not include the requirement that producers obtain crop insurance in order to receive payments under the new programs and the Agency is therefore removing references to those parts from 7 CFR part 1405. Also, an unnecessary reference to 7 CFR part 1464, dealing with tobacco, is removed. Tobacco payments under 7 CFR part 1464 were at one time covered by a statutory tie to crop insurance, which has since been repealed. The crop insurance requirements for the Conservation Reserve Program and the Tobacco Program contained in 7 CFR part 1405 will remain as provided for in section 508(b)(7) of the FCIA. Some non-CCC loans and payments are also covered in section 508(b)(7) and are governed by other regulations. They are not impacted by this rule. This rule also does not impact crop-insurance ties to eligibility for CCC benefits that arise from provisions other than section 508(b)(7).

List of Subjects in 7 CFR Part 1405

Loan programs—agriculture

■ For the reasons set forth in the preamble, 7 CFR part 1405 is revised as set forth below.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

■ 1. The authority citation for Part 1405 is revised to read as follows:

Authority: 7 U.S.C. 1508; 15 U.S.C. 714b and 714c.

■ 2. Amend § 1405.6(a) by revising the first sentence of the introductory text to read as follows:

§ 1405.6 Crop insurance requirement.

(a) To be eligible for any benefits or payments under 7 CFR part 1410 the producer must obtain at least the catastrophic level of insurance for each crop of economic significance in which the producer has an interest or provide a written waiver to the Secretary that waives any eligibility for emergency crop loss assistance in connection with the crop, if insurance is available in the county for the crop. * * *

Signed at Washington, DC on May 20, 2003.

James R. Little,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–13246 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1466

Environmental Quality Incentives Program

AGENCY: Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) is issuing a final rule for the Environmental Quality Incentives Program (EQIP). NRCS published a proposed rule for EQIP in the **Federal Register** on February 10, 2003, (68 FR 6655) and solicited comments from the public. This final rule establishes the process by which NRCS will administer EQIP, responds to comments received from the public during the 30-day comment period, and incorporates clarifications to improve implementation of the program.

EFFECTIVE DATE: May 30, 2003.

ADDRESSES: This final rule may be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at *http://www.nrcs.usda.gov/programs/eqip/.* Select the EQIP rule from the menu.

FOR FURTHER INFORMATION CONTACT: Anthony J. Esser, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. e-mail: *anthony.esser@usda.gov.* Phone: 202–720–1840. Fax: 202–720–4265.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service has conducted a benefit cost analysis of the Environmental Quality Incentives Program (EQIP) as formulated for the final rule. The Department of Agriculture Reorganization Act of 1994 and the Unfunded Mandates Reform Act of 1995 also require analysis of costs, benefits and risks associated with major regulation. These requirements provide decision-makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimizes negative impacts to health, human safety and the environment.

The analysis finds EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied according to technical standards, will achieve economic and environmental gains. In addition, benefits would accrue to society for long-term productivity maintenance of the resource base, reductions in non-point source pollution damage, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. In the Farm Security and Rural Investment Act of 2002 (FSRIA), EQIP funding was authorized at $6.16 billion over the six-year period of FY 2002 through FY 2007, with annual amounts for the base program and the ground and surface water conservation provisions increasing to $1.36 billion in FY 2007 after the initial authorization in FY 2002 of $425 million. In addition, the 2002 Act authorizes a total of $50 million for the Klamath Basin in California and Oregon.

In considering alternatives for implementing the program, NRCS followed the legislative intent to optimize environmental benefits, address natural resource problems and concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures while complying with Federal, State, and tribal environmental laws. The analysis recognizes that several other Federal conservation programs will be implemented which will generate environmental benefits as well.

The analysis initially compared the 2002 NOFA (with certain changes required by the 2002 Farm Bill) to the original EQIP program as established in 1996. Then, benefits and costs for all alternatives for the rule were compared to the NOFA, which was used as the analytical baseline. Lastly, the new EQIP program as formulated for the final rule, is compared to the NOFA together with a display of how benefits compared with the original 1996 program.

Confined Animal Feeding Operations (CAFOs) may participate in the new program and it is estimated that $563 million (12.5 percent of the total) of EQIP funds will be allocated for that purpose. CAFOs are generally defined as those operations with greater than 1,000 animal units, subject to some exceptions. However, since the Environmental Protection Agency published its final rule for ''National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations'' (EPA CAFO) on December 15, 2002, benefits from treatment of those CAFOs are attributed to that rule rather than to EQIP, regardless of the extent to which EQIP funds may be used to assist the CAFO managers with rule compliance. The economic analysis shows estimates from two perspective alternatives: (1) with CAFO benefits and costs included, and (2) with CAFO benefits and costs excluded.

The Final Rule—Its Major Features and Effects

Decisions leading to the final rule were made after consideration of all comments on the proposed rule and a review of their effects on program benefits and costs. Program benefits and costs under alternative scenarios in the main body of this report were available to guide decision-makers. Decision-makers reviewed these alternatives as the final rule was defined.

The final rule allows for adoption of a combination of the alternatives to the NOFA that are described in the report. The following scenarios are recommended as a result of the benefit-cost analysis in order to achieve benefits described. In particular, the final rule incorporates a scenario with the following features:

(1) Twenty five percent of livestock funds are allocated to each AFO/CAFO size class;

(2) A $450,000 payment ceiling to any contract and to any program participant over a six year period;

(3) An average cost share rate of 65 percent on any practice;

(4) National Priority targeting that implies lower cost share rates (55 percent) for practices linked to grazing, wind erosion, and wildlife habitats (since the benefits computed for the latter two do not match the specifications in the rule for air quality and at-risk species);

(5) Fund allocation that varies as a function of cost-share (practice/benefit categories with higher priorities are the ones with higher cost share rates); and

(6) A spatial evaluation process focusing on environmentally sensitive areas such as impaired watersheds that improves benefits by 10 percent in all categories except grazing.

(7) Performance incentive for efficient implementation of EQIP.

The new EQIP program in the final rule has a substantial beneficial effect on the environment compared to continuation of the 1996 program. A total of 96 million acres of agricultural land will be treated over the six years of the program with the final rule, compared to 41 million acres under the 1996 program. This includes 70.3 million acres of cropland, 15.5 million acres of grazing land (pasture and rangeland), and 10.3 million acres for wildlife habitat improvement. Resource treatment increases compared to the 1996 rules include an additional 2.9 million acres for sheet and rill water erosion (USLE) reduction, 3.5 million acres for wind erosion, 14.7 million acres for non-waste nutrient management, 22.0 million acres for net irrigation water reduction, 6.2 million acres for grazing productivity, and 5.5 million acres for wildlife habitat will occur on the landscape. Also, an additional, 31,000 animal feeding operations (5.6 million animal units) will be treated under the final rule, as compared to continuing the 1996 program, excluding CAFO treatments (34,000 animal feeding operations) and 11.4 million animal units if the CAFOs are included. Also, compared to the 1996 rules, an additional 12.8 million animal units and 39,468 animal feeding operations will be treated, and water induced soil loss from agricultural land will decrease by 24.5 million tons/year.

The Table below shows the costs and benefits (in $ million) of the final rule compared to the NOFA and the 1996 program.

	1996 EQIP with $200 million per year 2002–2007	Rules and funding according to the 2002 legislation and NOFA		Final EQIP rule	
		Include CAFO benefits & costs [b]	Exclude CAFO benefits & costs [c]	Include CAFO benefits & costs [b]	Exclude CAFO benefits & costs [c]
Benefits:					
Animal Waste Management (Total) [a]	322	3,608	1,928	4,085	2,405
By Operation Size Class (AUs):					
>1000 [b]	0	1,680	0	1,680	0
500–1000	142	705	705	871	871
300–500	98	620	620	773	773
<300	82	602	602	761	761
Land Treatment Total	2,444	4,284	4,284	5,828	5,828
USLE Reductions	640	827	827	1,243	1,243
Grazing Improvement	671	934	934	1,078	1,078
Irrigation Improvement/Water Savings	716	1,803	1,803	2,519	2,519
Wind Erosion Reductions	115	156	156	198	198
Non-waste Nutrient Management	167	320	320	482	482
Wildlife	135	244	244	309	309
Benefits from non-analyzed practices [d]	587	1,005	791	1,263	1,049
Grand Total Benefits	3,353	8,897	7,003	11,176	9,282
Costs:					
EQIP Funds	978	4,480	3,917	4,480	3,917
Grand Total Costs [e]	2,374	6,600	5,673	7,620	6,626
Benefit Cost (BC) Ratios	1.4	1.3	1.2	1.5	1.4
Net Benefits (Benefits—Total Costs)	979	2,296	1,329	3,555	2,656

[a] Assumes 7.5 percent of EQIP funds for each small livestock class in ''Old'' and 12.5 percent for each class in ''New''.

[b] Benefits and costs of treating large CAFO benefits and costs are accounted for, even though the benefits are attributable to the EPA CAFO rule rather than EQIP.

[c] Benefits and Costs of large CAFOs not accounted for.

[d] Assumes that benefits per EQIP dollar for practices not assigned to a benefit category are on average the same as the practices analyzed.

[e] Total costs are calculated based on 74 percent of EQIP funds for cost sharing and 26 percent of EQIP funds for Technical Assistance (TA). Note that the costs here are not the sum of costs from analysis of individual benefit categories, since that would involve double counting. Total costs include both the EQIP funding as well as producers' cost-share.

Conclusions

As described in the above paragraphs, implementation of the final rule will generate significant environmental and economic benefits. The final rule benefit cost ratio is equal to the 1996 rule when the costs and benefits of CAFOs are excluded and is slightly higher when the costs and benefits of CAFOs are included. The final rule has higher net benefits than the NOFA because of the prioritization based on natural resource concerns.

This benefit cost analysis represents a comprehensive study of alternative ways to implement the new EQIP authorities contained in the 2002 farm bill. The best available data, including selected data on EQIP experiences, and economic and natural resource effects

analytical models were used in its development.

Natural Resources Conservation Service decision-makers reviewed the findings of the analysis and chose a combination of the elements described in the report as they are formulated for the final rule. For example, the significant benefits achievable by focusing on reducing water erosion and sedimentation from otherwise excessive levels on agricultural land resulted in it becoming a National priority. In addition, a definition of cost effectiveness was introduced in the final rule and will be used selecting conservation practices and emphasizing their adoption.

The complete analysis addressed several issues critical to the implementation of the final EQIP rule. These included the impacts of selected alternatives concerning: (1) Fund allocations among different sized livestock facilities; (2) payment ceiling limits; (3) cost share rates; (4) National priority targeting; (5) variable cost-share rates to address higher priority problems; and (6) a spatial evaluation process to improve benefits.

A copy of this analysis is available upon request from Anthony J. Esser, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890 or on the Internet at *http://www.nrcs.usda.gov/programs/eqip.*

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

NRCS has determined through an amendment to the ''Environment Assessment for the Environmental Quality Incentives Program, April 2003'' that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment, the amendment, and the finding of no significant impact may be obtained from Anthony J. Esser, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890 or on the Internet at *http://www.nrcs.usda.gov/programs/eqip.*

Paperwork Reduction Act

Section 2702(b)(1)(a) of the 2002 Act provides that the promulgation of regulations and the administration of Title II of the Act shall be made without regard to chapter 35 of Title 44 of the United State Code, the Paperwork Reduction Act. Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to provisions of the Paperwork Reduction Act, including review by the Office of Management and Budget.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and with the Freedom to E-File Act, which require Government agencies in general and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program proposed under this rule are not yet fully developed for the public to conduct business with NRCS electronically. However, the application form will be available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. Applications may be submitted at the local USDA Service Centers, by mail, or by facsimile. Currently, electronic submission is not available because signatures from multiple producers with shares in agricultural operations are required.

Executive Order 12998

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule are not retroactive. The provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to Section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this proposed rule as major and NRCS conducted a risk analysis. The risk analysis establishes that the EQIP proposed rule will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the risk analysis is available upon request from Anthony J. Esser, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/eqip.*

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), NRCS assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to 5 U.S.C. Section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it has been determined by NRCS that it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit NRCS to offer the public timely, reliable information about funding for conservation practices as early before the start of the spring 2003 planting season as possible. Information about the availability of the program for establishing conservation practices influence planting decisions and should, therefore, be disseminated to producers before planting decisions are made. Failure to provide this information in a timely manner may mean that the realization of important conservation benefits available under EQIP may be delayed for another year before the start of another planting season. Accordingly, this rule is effective upon publication in the **Federal Register**.

Discussion of Program

The Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107–171, May 13, 2002) re-authorized and amended the Environmental Quality Incentives Program, which had been added to the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127). The 2002 Act also amended the Environmental Conservation Acreage Reserve Program by changing the section name to the Comprehensive Conservation Enhancement Program and removing the authority for the Secretary of Agriculture to designate areas as conservation priority areas.

As provided by section 1241 of the 1985 Act (16 U.S.C. 3841), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. (The Chief of the NRCS is a vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

Through EQIP, NRCS provides assistance to farmers and ranchers who face threats to soil, water, air, and related natural resources on their land. These include grazing lands, wetlands, private non-industrial forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, NRCS will provide assistance in a manner that will promote agricultural production and environmental quality as compatible goals, optimize environmental benefits, and help farmers and ranchers meet Federal, State, and local environmental requirements. NRCS will offer the program throughout the Nation using the services of NRCS and Technical Service Providers. NRCS will implement a consolidated and simplified process to reduce any administrative burdens that would otherwise be placed on producers.

In this rule, NRCS proposes to incorporate changes in the EQIP regulations, 7 CFR 1466, resulting from the passage of the 2002 Act. Several important changes were made in the 2002 Act that require changes to the regulation. These include:

(1) Changing the maximum payment limitation from $50,000 per person per contract to $450,000 per individual or entity for all contracts entered into in fiscal years 2002 through 2007;

(2) Revising the purpose from ''maximize environmental benefits per dollar expended'' to ''optimize environmental benefits'';

(3) Eliminating the competitive bidding by applicants;

(4) Allowing payments to be made in the first year of the contract;

(5) Removing language authorizing targeting of funds to Conservation Priority Areas;

(6) Removing the provision prohibiting a producer from receiving cost-shares for an animal waste facility on an animal operation with more than 1,000 animal units;

(7) Allowing cost-share rates of up to 90 percent for limited resource farmers or ranchers and beginning farmers or ranchers;

(8) Reducing the minimum length of a contract from five years to one year after installation of the last practice;

(9) Increasing funding from $200 million per year to $400 million in FY 2002 and increasing to $1.3 billion per year in FY 2007; and,

(10) Imposing an average adjusted gross income (AGI) limitation.

In an effort to make the program more effective and efficient, the Department has initiated several streamlining changes, including:

(1) Eliminating the program's dual administration by changing Farm Service Agency (FSA) participation from concurrence to consultation;

(2) Reducing the planning requirements needed to develop the contract; and

(3) Allowing producers to have more than one contract per tract at any given time.

The fundamental philosophy of the program, assisting agricultural producers install conservation practices to provide environmental benefits, has not changed. The statutory and Departmental changes respond to limitations and restrictions identified by agency staff and participants. Agricultural producers who are interested in participating in the program will apply as they have in the past and should experience a quicker turn-around on their application. Producers also have some expanded financial opportunities with higher contract limits and the ability to receive payments earlier in the contract period.

On February 10, 2003, NRCS published a proposed rule with request for comments. The proposed rule described the program requirements, administrative processes, and eligibility criteria that NRCS would use in implementation of EQIP. The proposed rule also described how NRCS would manage the program to optimize environmental benefits and what information would be considered in designating program funds for natural resource concerns to states and to contracts. Over 1,250 separate responses containing about 4,900 specific comments were received during the 30-day comment period: 608 responses from farmers, ranchers, and other individuals, 175 from agricultural and rural community organizations, 54 from environmental organizations, 268 from conservation districts and related groups, 37 from business entities, 118 from State and local agencies, 24 from tribes and tribal organizations, and nine from congressional representatives.

Additional responses were received from Federal agencies and employees; their comments are not included in the following analysis of public comments. These responses were treated as inter and intra-agency comments and considered along with the public comments where appropriate.

All comments received are available for review in Room 5229 South Building, 14th and Independence Ave., SW., Washington, DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, almost all respondents expressed appreciation for the opportunity to comment on the EQIP proposed rule. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule. Some of these suggestions were group efforts, where individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule.

The majority of comments centered on six major issues in the proposed rule: (1) Funding, payments and cost-share rates; (2) setting priorities, ranking of applications and contract approval; (3) use of EQIP assistance for CAFO/AFO; (4) locally-led conservation; (5) limited resource producer/ranchers and beginning farmer or rancher; and (6) use of conservation planning in the EQIP program. These comments were considered as part of the rulemaking record to the extent that they were relevant to the provisions of the rulemaking. Numerous minor editorial and other language clarification changes were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes were included in the final rule.

To implement the final rule, NRCS will be responsible for establishing and documenting in program guidance the overall policies, priorities, procedures, and guidelines for EQIP. NRCS will seek the review and input by other Federal agencies, as appropriate, when developing the guidance documentation.

General Comments on 7 CFR Part 1466

Under the proposed rule, NRCS would set out EQIP regulations in 7 CFR part 1466. The following summarizes general comments received on the proposed rule and NRCS's response to them.

1. The 1996 Act

Support for both the legislative and Departmental changes to EQIP was expressed in two-thirds of the comments received. One-third of the comments expressed concern that proposed rule removed the conservation planning requirement from EQIP,

provided for unrestricted cost-share assistance to new and expanding animal operations and CAFOs in flood plains. The Department recognizes that Congress made adjustments to the EQIP legislation in response to concerns from their constituents. The Department included those concerns when developing the proposed rule. The Department is required to administer the laws as passed by Congress and provide EQIP assistance to all producers. Also, the Department feels EQIP, as proposed, fully supports the NRCS progressive planning policy by allowing producers to request assistance for only those conservation practices they are ready to implement.

2. Preamble Language in the Proposed Rule

Two comments received were concerned with the length of the public comment period and requested an extension of the comment period. Several hundred comments appreciated the opportunity given for input and the varied mediums by which comments would be accepted. Over 1,250 responses were received from a range of interested parties from across the Nation. NRCS believes that a sufficient length of time was provided and it has received sufficient input to proceed to a final rule.

A basic element of EQIP implementation throughout the proposed rule is the use of the locally-led process to adapt EQIP to local conditions. The Department received 176 comments in support of locally-led conservation, frequently commenting that the process in the proposed rule over-rides local decision making and is a top down process. NRCS believes that the locally-led process is the optimal mechanism for implementation of EQIP and believes that the proposed rule strengthens the process. The locally-led process utilizing the State Technical Committees and Local Work Groups has been discussed in detail in the preamble to the 1997 EQIP final rule (FR 28258, vol. 62, no. 99, May 22, 1997) and does not need to be reiterated.

In the preamble NRCS requested comments on eight specific issues. Where applicable the public comments and recommendations have been incorporated in the final rule or will be included in program guidance and delivery activities.

One of the questions in the proposed rule asked for comments on adopting a limited waiver program, as well as on innovative mechanisms that NRCS could consider to institutionalize alternatives for encouraging conservation implementation. NRCS received 46 comments regarding credits and credit trading. Twenty-seven respondents suggested pilot programs to resolve the issues discussed, three suggested proceeding with caution, seven respondents did not support the concept, 4 suggested that the waiver should apply to all previously applied practices, and three respondents stated that USDA does not have any interest in credits a producer might receive from applying conservation practices with EQIP assistance. Some respondents interpreted the discussion in the proposed rule that NRCS would initiate, support and administer an environmental credit trading program. The actual intent is that NRCS would waive all financial interest to any environmental credits that accrue to a participant implementing conservation practices using EQIP assistance. NRCS has determined that NRCS does not have any financial interest in any environmental credits that may accrue to a participant who implements conservation practices with EQIP assistance.

The proposed EQIP rule also asked for comments regarding how to administer a loan program in accordance with the Ground and Surface Water Provisions of the 2002 Farm Bill. NRCS received 13 comments suggesting looking into existing funding programs such as the Nonpoint Source Partnership, which is a collaborative effort between the state and EPA. The Department believes that the 2002 Farm Bill authorizes the implementation of a loan program and does not need to address the issue in the final rule. NRCS will reserve the option to utilize a loan program in the future and will do so with policy and program guidance in appropriate manuals and handbooks.

The proposed rule also requested comments regarding how the Klamath Basin water conservation provisions should be implemented. NRCS received 10 comments; five suggesting that the Klamath Basin issue was more than agriculture and that NRCS should cooperate with other stakeholders in the development of a basin plan; 4 recommending water quality improvements should be considered as ''net savings'' because the end result is more water available for wildlife purposes; and one comment that the administrative costs should not be borne by the Klamath Basin allocation. NRCS reaffirms the language of the proposal rule that the two Klamath Basin State Conservationists will lead a basin planning effort that may require additional funding from sources other than EQIP funding. NRCS also believes that there is sufficient water in certain times of the year that can be captured with on-farm storage allowing participants to accomplish the statutory intent of ''net-savings'' without reducing irrigation water usage. NCRS will provide guidance through the EQIP Program Manual that ''net-savings'' in the Klamath Basin can be accomplished in three ways; reduced irrigation water usage, improved off-site water quality, and increased on-farm storage of water.

Section-by-Section Comments on 7 CFR Part 1466

Section 1466.1 Applicability

The proposed rule indicated that farmers and ranchers could receive program assistance to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. There were seven comments expressing support to include language that another purpose of the program is to assist producers in complying with environmental regulations. Several other comments suggested that wildlife should be specifically stated as a resource issue and that NRCS should explicitly state which land uses are eligible. EQIP shall be implemented in a balanced manner in accordance with the statutory purposes for which EQIP was established, including the objective to optimize environmental benefits. The proposed rule contained broad language to facilitate the identification of a range of priority natural resource concerns at the state and local level based on National priorities and the Department believes that this is the appropriate approach. The final rule now contains, however, compliance with environmental regulations as a purpose of the program.

Section 1466.2 Administration

In this section, NRCS is identified as an agent of CCC and that NRCS will consult with FSA at the National level in the development of policies, priorities and guidelines. This section also reaffirms NRCS's commitment to locally-led conservation through the State Technical Committees and Local Work Groups. One hundred and sixty-six comments express support for locally-led conservation. One comment suggest including private landowners on Local Work Groups. USDA believes that it is important for both NRCS and FSA to consult on program implementation and that the proposed arrangement takes advantage of the proven expertise of both agencies. USDA strongly supports locally-led conservation and

recommends that Local Work Groups include public comment periods in their meetings but must limit membership to representatives of state and local governments and political subdivisions and agencies thereof in accordance with the Federal Advisory Committee Act (FACA).

Section 1466.3 Definitions

Agricultural Operation

NRCS received 23 comments in response. Ten respondents suggested it should be limited to the field where the practice is being implemented, whereas one respondent suggested the field plus any contiguous parcels, and 13 respondents suggested all the land operated by the producer. The definition has been modified in the final rule to include all parcel or parcels of land, both contiguous and non-contiguous.

At-Risk Species

The proposed rule identified at-risk species habitat recovery as a National priority. Eight respondents suggested the need for a definition of at-risk species. One respondent suggested the definition to include invertebrate pollinators, one suggested imperiled species and seven respondents suggested to include Federally listed and candidate species as well as species of local concern. The Department agrees with the suggestion to define at-risk species and a definition has been included in the final rule.

Beginning Farmer and Rancher

Six comments suggesting the 10-year time frame is too long. Three respondents recommended five years and one recommended a maximum of three years. The Department has an established definition for Beginning Farmer and will continue to use the existing definition in the final rule.

Confined Livestock Feeding Operation

Two respondents recommended this definition was not necessary for implementation of EQIP. The Department does not use confined livestock feeding operation in the implementation of EQIP and has removed the definition from the final rule.

Indian Tribe

Four respondents commented on the definition of Indian tribe and how there appeared to be some inconsistency in how it was used in the Proposed Rule, including the lack of reference to Conservation District established under tribal law. No change to the definition of Indian Tribe is proposed because it reflects the definition provided by 25 U.S.C. 3701. However, the rule has been clarified to reflect the appropriate use of Indian Tribe in the text. Conservation Districts established under Tribal law has been added to the definition of Conservation Districts.

Limited Resource Farmer and Rancher

Six comments were received; three respondents suggesting that the gross farm sales value was too low and three respondents suggesting it was deficient by not identifying future year adjustments. The Department's interagency task force reviewed the comments and modified the definition for the final rule.

Priority Natural Resource Concern

Three comments were received. One respondent supported the definition of priority natural resource concern as written and two respondents suggested including a resource objective that is being addressed through an environmental regulation. NRCS believe that optimization of environmental benefits can be achieved through a prioritization process. The definition in the final rule is not changed.

Producer

Fifty-one comments were received. Seventeen suggested that this definition specifically include private non-industrial forest land, 17 want assurance that the definition does not preclude agroforestry, and 36 suggested language that provides assurance that private non-industrial forest land is eligible for EQIP assistance. The Department recognizes forest products as an agricultural commodity and forest land as agricultural land. The definition in the final rule is not changed.

Wildlife

NRCS received 10 comments to revise the definition of wildlife; five suggest a rewording and five respondents suggested crafting the definition to allow for exclusion of exotic species. The Department believes that the National Invasive Species Council operating under the authority of Executive Order 13112 provides sufficient direction and guidance for USDA to implement EQIP without specifically including invasive species concerns in the definition. In the past, many state and local decision-makers have identified invasive species as a priority natural resource concern and used EQIP resources to support control.

New Definitions

Several respondents suggest new definitions be included in the final rule, including: at-risk species (eight comments). One respondent suggested the definition to include invertebrate pollinators, one suggested imperiled species and seven respondents suggest the definition to include Federally listed and candidate species as well as species of local concern. The Department agrees with the suggestion to define at-risk species and a definition has been included in the final rule.

The 2002 Farm Bill established an earnings limit for an individual or entity. For purposes of consistency, the Department uses FSA's Payment Limitation and Payment Eligibility rule (7 CFR 1400) for definitions of entities and joint ventures. This rule, however, does not contain a definition of individual. The Department added definitions of entity and joint operation to the final EQIP rule and utilizes the definition of person for individual. NRCS has adjusted usage of these terms throughout the EQIP rule to assure the final rule is consistent with 7 CFR1400 and the statutory earnings limit.

During the review process the Department recognized a concern that cancellation of EQIP contracts results in a loss of financial assistance and an expenditure of unproductive technical assistance. In an effort to minimize these losses, NRCS will include a Liquidated Damages policy in EQIP for producers who cancel contracts without proper cause and include a definition of liquidated damages in the final rule.

Three comments on the Indian trust land definition were considered restrictive and there is a need for more land inclusion. To be more inclusive a definition for Indian Land, consistent with 25 CFR part 150, has been included in the final rule and the definition for Indian Trust Land was removed from the final rule.

Section 1466.4 National Priorities

NRCS received 378 comments regarding National priorities; 141 regarding water resources, 60 related to air resources, 45 regarding soil erosion, 56 comments related to at-risk species and wildlife and 71 of a general nature.

Of the 141 comments related to water resource; 52 recommended separating water quality and water quantity into two priorities; 93 respondents recommended removing the focus on Total Maximum Daily Loads (TMDL), 82 because TMDL does not always include drinking water supplies, nine because including TMDL is analogous to targeting, and two for including 305(b) reaches (non-TMDL); and one respondent suggested the Gulf of Mexico hypoxia and contributing factors

should be included as a specific National priority.

Forty four respondents recommended adjusting the air quality National priority by adding ''atmospheric concentration'' before or emissions and 16 recommended that national air quality priorities should not apply to Indian Tribes.

NRCS received 60 comments that the soil erosion National priority limited use of EQIP to land with lower rates of erosion that are of a particular concern. Additionally, NRCS has determined that the reference to highly erodible land could be misleading with regards to providing assistance for compliance with the Highly Erodible Land (HEL) provisions of the 1985 Farm Bill.

The fourth National priority, at-risk species habitat recovery, received 56 comments. Thirty two respondents recommended that this priority be directed to wildlife and wildlife habitat. Six respondents recommended defining at-risk to include Federally listed as well as species of regional concern with one of these misinterpreting the proposed rule to be Federally listed species only. Four respondents supported the priority as presented and 14 respondents suggested removing at-risk species priority with two suggesting there were other programs to accomplish this objective.

In addition, NRCS received recommendations to emphasize or add National priorities; five suggested EQIP is the implementation vehicle for salinity control measures authorized by the Colorado River Basin Control Act; five recommended adding quail restoration; eight suggested emphasizing grassland, grazing land and rangeland, 13 wanted the National priorities to support private non-industrial forest land, and three wanted the priorities to include promoting agricultural production.

NRCS received five comments that the National priorities appeared to be a compliance assistance program for laws and regulations of other agencies. Fifty comments supported the establishment of state level conservation priority areas at the state's discretion, three respondents suggested that there should not be National priorities but national guidance in support of state and local priority resource concerns, and two suggested that legislative requirement for 60 percent for livestock practices be applied at the state level and not the national level. The Department believes that the National priorities in the proposed rule meets Congressional intent in providing direction and flexibility to the state and local decision-makers to utilize EQIP resources to address locally identified priorities and optimize environmental benefits. The National priorities in the proposed rule are focused on natural resources and resource issues. These priorities are sufficient to guide local program delivery and only the soil erosion priority will change in the final rule to remove any potential conflict with Highly Erodible Land provisions of the 1985 Farm Bill.

Although the fundamental philosophy of the program, assisting agricultural producers to install conservation practices to provide environmental benefits, has not changed; the 2002 Farm Bill removed the authority of the Department to establish priority areas to which program resources are focused. NRCS eliminated the requirement that a portion of the funds allocated to the states would be focused into Conservation Priority Areas. The Department believes that NRCS methodology to optimize environmental benefits through an approach that integrates consideration of National Priorities in four key program components: (1) The allocation of financial resources to States; (2) the allocation of financial resources within states; (3) the selection of conservation practices and the establishment of cost-share and incentive payment levels; and (4) the application ranking process will provide the same level of environmental conservation as targeting to conservation priority areas. The intent of EQIP is to provide maximum flexibility to local decision-makers to implement the program. The identification of National priorities is the first step to accomplish this and is the basis for the allocation for funds from the National NRCS to state-level NRCS.

Two respondents commented on the need to include the use of EQIP to mitigate the impact of natural disasters in the National priorities. No changes to the rule were made because EQIP is not intended to be a disaster program.

Section 1466.5 National Allocation and Management

This section of the proposed rule contains information regarding allocation of funds from the national level to the state level, the establishment of an incentive payment, reviewing progress and accountability, and delegation of authority to the State Conservationists to implement the program to achieve National priorities.

USDA received 37 comments related to the National allocation. Nine respondents suggested including the amount of tribal land in the allocation formula, three suggested adding unmet need based on previous year's number of applications, 4 recommended using regulatory compliance as a factors, two suggested forest land as a factor, and six suggested directing more funding to crop base agriculture and less to animal agriculture. Several respondents also recommended adjusting the allocation based on the intensity of agriculture in each state. Another five respondents suggested that National Association of Conservation Districts (NACD) and the Forest Service (USFS) should be consulted when making allocation decisions and one respondent supported making National Allocation task force report strategy available to the public. NRCS is in full support of reviewing and revising, as necessary, the National EQIP allocation formula on a regular basis. NRCS intends to incorporate a wide variety of partners and customers in this process and intends to fully disclose the strategy of the task force to the public.

NRCS also received 10 comments regarding the use and reuse of EQIP funds, suggesting that funds made available from cancelled contracts should be able to be re-used to fund new contracts. The Department understands the position of the respondents, however, the re-use of funds is a limitation associated with the authorization language in the 2002 Farm Bill.

In the proposed rule, NRCS specifically asked for comments regarding implementation of an incentive award; ''what approaches NRCS can use to efficiently and effectively implement this award incentive''. NRCS received over 472 comments regarding this item, the majority of which, 415, supported the concept and suggested that the incentive be substantial but did not offer other specifics. Eleven respondents suggested that accomplishments with Indian tribes should be considered as a factor for determining the incentive award; three recommended using only how local conservation needs were addressed; and one suggested using leveraging, use of TSPs, and multiple resource and long-term benefits. Forty one respondents were against the incentive award because they felt it would penalize states for not having National priorities, penalizing farmers for reasons beyond their control, or establish a bidding competition between states to compete for available funds. One respondent suggested using pervious year performance to allow the award to be made early in the year. NRCS believes there is a potential confusion between the term ''incentive award'' used in the proposed rule and the incentive

payment level established for a producer to implement a land management practice and therefore will revise the term to ''performance incentive''. NRCS will use the performance incentive as one of its approaches to optimize environmental benefits by supporting the state decision-makers with additional EQIP resources based on performance. The guidelines for administering this award will be developed and made available in EQIP program guidance. NRCS is committed to full disclosure of program implementation policy and will make this information publicly available as it is finalized.

NRCS received 422 comments in response to the request for comments on how best to evaluate the performance of the EQIP program. How should environmental changes be measured, and what methodologies would best identify environmental effects due to contract activities? What kind of output measures and data collection strategies should NRCS consider? What approaches could NRCS use to evaluate cost-effectiveness? Four hundred and one responders commented on NRCS's intent to move toward actual environmental outcomes and benefits rather than the number of contracts and practices. Seven respondents suggested a national team to develop a framework for monitoring and reporting, 4 respondents wanted assurance that NRCS would include forestry performance measures in any process that is used, 10 respondents recommended encouraging scientific measurement of conservation practices, and seven respondents did not support Technical Service Providers as a measure of performance. One respondent suggested a crucial element of performance evaluation is consideration of the cumulative impact. NRCS is actively developing approaches to evaluate performance for EQIP as well as all other conservation programs administered by NRCS. NRCS is committed to public disclosure and transparency as evidenced by the posting of data and information on the NRCS Web site at *http://www.nrcs.usda.gov* and the NRCS Performance and Results Measurement System (PRMS) at *http://prms.nrcs.usda.gov/prms/index.html.* NRCS will continue to refine its accountability system to make performance data available to the public.

In the final rule, NRCS removed those incentive payment factors that are an iteration of the National measures identified in the preamble of the proposed rule. The measures: Increasing overall environmental benefits, addressing multiple resource concerns, ensuring more durable environmental benefits and limiting adverse ancillary impacts, encouraging innovation, supporting the statutory mandate to apply nationally 60 percent of available financial assistance to livestock-related conservation practices, and employing appropriate tools to more comprehensively serve EQIP purposes will be reviewed periodically and adjusted as necessary. The National measures will be provided in the program guidance in the EQIP Manual and will be made available to the public.

Section 1466.6 State Allocation and Management

The proposed rule provides that the State Conservationist with advice from the State Technical Committee will determine how EQIP will be implemented in the state, identify the priority resource concerns, and determine how EQIP funds will be utilized. NRCS received 47 comments regarding state level fund allocation and program management. Twelve respondents recommended that tribal land should be a State allocation factor, 4 recommend using regulatory compliance needs, and 18 suggested multi-tribal collaborative efforts. Another 12 respondents wanted assurance that the state and local decision-makers will consider forestry issues and private non-industrial forest land as eligible for EQIP. NRCS also received one comment raising a concern that if the State Conservationist, in support of locally-led conservation, allocates EQIP funds to counties in smaller amounts the needs of the large animal facilities and large agricultural operations will not be satisfied. The Department defines row crop, rangeland, specialty crop, animal and agroforestry as agricultural land. The state allocation process, which uses locally led conservation through advice from the State Technical Committee, is based on state identified priority resource concerns and is the second component of NRCS's optimizing environmental benefits process. EQIP has been over subscribed since 1997 and will continue to be so in the future. The economic analysis conducted to evaluate the impact of EQIP has determined that EQIP will treat approximately 10 percent of crop and grazing land. The final rule will provide specific direction to State Conservationist's to prioritize resource concerns and to do so in accordance with the National priorities.

Four respondents commented that State allocations should consider Indian lands. Two respondents commented that a Tribal Conservation Advisory Council should be at the same level as the State Technical committee in terms of providing advice to the State Conservationist. No rule change has been made because allocations made by the State Conservationist consider the natural resource concerns identified with advice from the State Technical Committee and Local Work Group. Indian tribes are represented on State Technical Committee under 7 CFR 610.

Section 1466.7 Outreach Activities

One hundred and eighty-seven comments made specific recommendations supporting USDA's outreach efforts to assist limited resource producers/ranchers, beginning farmers or ranchers and under-served populations. These recommendations include: Permit flexible schedules for applying practices and systems; offer low-cost conservation practice alternatives; consider the value of a producer's labor as the producer's share of the cost; utilize local cooperative extension service agencies in the education efforts; conduct a survey of producers who do not normally participate and ask them the reasons for their non-participation; provide flexibility regarding the control of land for American Indians and others. The Department remains dedicated to increasing program availability to all eligible producers. The recommendations made in the public comments have been incorporated in the final rule where applicable or will be included in program guidance and delivery activities.

Two respondents asked that NRCS include Tribal level in the description of where NRCS will conduct outreach activities. The rule has not been amended because the language referred to the NRCS organizational structure and Indian tribes are specifically included as a targeted group for outreach.

Section 1466.8 Program Requirements

One respondent recommended that the State Conservationist instead of the Chief of NRCS be given the authority to grant waivers for having control of the land allotted by the Bureau of Indian Affairs, Tribal land and other instances. The rule has not been amended because definition of Chief includes a designee.

NRCS received one comment expressing concern that a complete comprehensive nutrient management plan (CNMP) was required to be submitted in entirety during the initial

planning phase of the EQIP application in response to NRCS's request for comments regarding how incentive payments to develop a CNMP should be implemented. The proposed rule did not require that a full CNMP needed to be developed during the initial planning process, the proposed rule stated that a participant who receives EQIP assistance for an animal waste storage or treatment facility will provide for the development and implementation of a CNMP. This provision will remain unchanged in the final rule in support of the legislative intent for implementation of CNMPs in the 2002 Farm Bill.

The use of EQIP assistance for new and expanding large animal facilities received 520 comments two of which supported using EQIP for all animal facilities regardless of size and 518 respondents suggest that the final EQIP rule that prohibit funding of new and expanding large animal facilities and of large animal facilities in floodplains except to move the facility out of the floodplain. The Department removed the restriction on providing EQIP assistance to waste storage or treatment facilities for large animal facilities in accordance with the 2002 Farm Bill. The Department supports the concept that the program assistance should be available to all operations and should be awarded to those operations that provide the optimal environmental benefits. Section 1466.20 and program direction will provide state and local decision-makers guidance for ranking of applications and selecting contracts to achieve this objective.

NRCS received 4 comments to remove the provision to start or complete a conservation practice within the first twelve months of an EQIP contract. NRCS believes that the purpose of EQIP is to implement conservation activities. Producers who are not ready to implement practices should not apply for assistance. However, NRCS also understands that there often are extraneous circumstances that can delay implementation, therefore, the final EQIP rule will provide an opportunity for the participant to request a waiver from the State Conservationist to delay implementation.

NRCS received five comments regarding allowing more than one contract on a tract of land at the same time; 4 in support and one against. The proposed EQIP rule removed this eligibility requirement from the previous rule. NRCS believes that allowing producers to have two or more contracts on a parcel supports the concept of ''progressive planning'' which allows producers to implement practices in accordance with their ability.

NRCS received two comments recommending that marketing facilities be eligible for EQIP contract. The Department believes that the statutory intent is to direct EQIP assistance to producers for implementation of conservation practices on working agricultural land. NRCS will provide guidance with the EQIP Program Manual that non-production ancillary businesses such as agricultural supply buyers and sellers are not eligible to participate in EQIP. This interpretation also applies to producer organizations and cooperatives that provide support but do not operate working land for the production of food or fiber.

NRCS received two comments that a producer who prematurely terminates an EQIP contract should be eligible to reapply for a new contract. NRCS believes that the proposed rule does not prevent a participant from reapplying after prematurely terminating a contract. NRCS's objectives are to implement cost-effective conservation and optimize environmental benefits and will award contracts to those applications that best achieve these goals. Since funds released by termination of an EQIP contract are not available for reuse on another contract, NRCS has provided, in the final rule, an option for reimbursement of administrative and assistance expenses (liquidated damages) incurred. NRCS will provide guidance in the EQIP Program Manual regarding the nature and extent of liquidated damages.

Section 1466.9 EQIP Plan of Operations

The EQIP plan of operations identifies the time and place of the conservation practices that the applicant has decided to implement. The Department has received 485 comments requesting NRCS to reinstate the provision for conservation planning that was removed from the 1997 EQIP rule. One additional comment was received in support of the reduced planning requirements but with a caveat that a level of planning should be maintained to assure that the implementation of one conservation practice that addresses one resource concern will not have a negative impact on another resource concern. The Department fully supports the comment and feels the policy guidance of NRCS adequately addresses the issue. NRCS planning policy contained in the NRCS General Manual and NRCS National Planning Procedures Handbook require the assessment of positive and negative impacts as part of the technical assistance provided to producers. The objective of NRCS planning policy is a whole farm resource management plan and NRCS policy incorporates the philosophy of ''progressive planning'' that includes development and analysis of alternatives and documentation of the producer's decisions. The EQIP final rule supports the ''progressive planning'' philosophy and allows EQIP assistance to be used to help a producer implement conservation practices as they make resource conservation decisions.

NRCS received 19 comments related to the definition of net-water savings. The Department will not create a National definition of ''net water savings'' due to the complexity of state and local water rights laws, and water programs and policies. In the final rule the responsibility for establishing a definition for ''net water savings'' is delegated to the State Conservationist.

Section 1466.10 Conservation Practices

NRCS received 67 comments which did not support the provision in the proposed rule to consider only land irrigated in three out of the last five years as eligible for EQIP assistance for irrigation practices. Sixty one respondents identified that NRCS recommended crop rotations for certain crops only required irrigation two years in a five year rotation. Six comments supported assistance for irrigation on land with no irrigation history to reduce production risk and in support of farm viability. The Department believes EQIP resources should be utilized to reduce the environmental impacts of irrigation on water resources. The Department has changed the restriction in the final rule to provide opportunities for irrigation assistance for those crops that are irrigated two out of five years.

NRCS received eight comments opposing the availability of incentive payments to participants for development of a CNMP especially when they are required to do so by EPA regulation. The Department supports the statutory intent to encourage the development of comprehensive nutrient management plans and provides the state and local decision-makers the authority to offer incentive payments and to determine incentive payment levels.

NRCS received 10 comments supporting allowing NRCS to approve interim conservation practices and financial assistance for pilot testing new technologies or innovations. Ten respondents recommended that state-of-the-art technology should not be the only basis for defining innovation and that innovation could also be defined as

a particular group of producers who have not adopted a commonly accepted technology. The Department believes that innovative approaches should be supported. NRCS has agency policy to provide for the development and implementation of innovative technology. NRCS also believes that unproven innovative technology that has not been field tested should be used cautiously until its utility is proven for a specific or wide spread application. NRCS will provide program guidance that innovation is more than state-of-the-art technology; innovation could also mean new techniques to certain groups or could also mean application evaluation approaches that consider the benefits of grouping practices rather than a scattered approach.

Several general comments were received regarding lack of access to USDA programs and need for special considerations for Indian lands. One respondent commented about the types of practices to be cost shared. Consideration must be given to those large blocks of land that have basic conservation practice needs or needs differing from those who have had access to programs since inception. Recommend that NRCS: (1) Develop ''special project'' areas that warrant the prioritization of conservation practices differing from those of the state. (2) Develop ''allowable rates'' for construction, labor, and material specific to the special project areas. The final rule has not changed. The process in the proposed rule allows for implementation of EQIP at the local level to adapt program delivery for varying resource issues, costs of implementation and other unique circumstances.

Section 1466.11 Technical and Other Assistance Provided by Qualified Personnel Not Affiliated With USDA

Four comments were received related to the inclusion of the private sector as qualified personnel who can provide EQIP assistance. The final rule added individuals who are certified by NRCS as a Technical Service Provider (TSP) to the list of providers an EQIP participant may select from to provide assistance.

Selection of appropriate TSP by EQIP participants was a concern of two respondents. The proposed EQIP rule allows participants to select a TSP. Participants may choose any qualified TSP or NRCS to provide EQIP related technical assistance.

Seven respondents asked to add 1994 Land Grant Colleges to the list of potential TSPs. The rule has been edited to show the inclusiveness of possible TSP rather than exclusiveness by naming various groups or individuals. ''Participants may use technical and other assistance from qualified personnel who are certified as Technical Service Providers by NRCS.''

A total 46 comments on Technical Service Provider liability, certification, confidentiality and training were received. At the time the proposed EQIP rule was developed the specifics of TSP were not known. The TSP interim final rule was promulgated in 7 CFR part 652 and it addresses the issues of liability, certification, confidentiality, and training.

Section 1466.20 Application for Contracts and Selecting Offers From Producers

NRCS received 58 comments suggesting the objective of cost-effectiveness was to reinstate competitive bidding and 466 respondents suggested rewriting the rule to prohibit competitive bidding. Another 14 responders recommended reinstating competitive bidding. NRCS does not believe using cost-effectiveness means competitive bidding since the cost refers to the total cost, not just the federal cost-share. Cost-effectiveness can be interpreted two ways. First in terms of greater environmental benefits for the same cost or second, providing EQIP assistance for the least-cost alternative. NRCS believes that the first interpretation will be accomplished by the ranking processes developed by state and local decision-makers. NRCS will provide program direction that in EQIP cost-effectiveness means NRCS will provide assistance to implement the least-cost alternative that would achieve the desired resource benefits. Participants may choose to adopt more costly alternatives but they would have to bear the additional costs. The proposed rule will not be changed.

Two respondents commented that the ranking factors should include recognition of the need for outreach or targeting of populations and areas with historically low participation rates. Additional comments recommended the insertion of tribal law compliance requirements into this section and include a reference to consulting with Tribal Conservation Advisory Councils. The EQIP ranking criteria consider the significance of the resource concerns, not the type of land ownership. However, any unique resource concerns identified by underserved populations may be added as a priority natural resource concern through participation in the State Technical Committees. NRCS also intends to conduct outreach to increase program accessibility for underserved populations.

The Department received 56 comments that suggest EQIP assistance should not be used for large animal facilities. EQIP should prioritize funding to small and medium size producers and two of which supported using EQIP for all animal facilities regardless of size. Another 94 respondents suggest that EQIP should be targeted to small and medium farms and 560 recommend language to prevent discrimination against small and medium sized farms. The Department has reviewed the economic benefits of several alternatives and determined that EQIP can treat the waste from the largest number of animal units for the least cost by allowing funding for large facilities. However, the Department also recognizes that small and medium producers may be least able to afford the adoption of conservation practices in their operation, and that EQIP may assist these producers avoid future regulations. NRCS has therefore included a provision in the final rule that the ranking process used to select application for contracts will be size neutral, that is, the process will not give preferential treatment to an application based on the size of the agricultural operation.

Additionally NRCS received 466 comments that the EQIP application ranking process should explicitly reward sustainable practices and exceptional performance and that will prioritize the best solutions not the biggest problems. NRCS believes that the state and local decision-makers will develop processes that achieve both cost-effectiveness and optimal environmental benefits. NRCS will provide full public disclosure by providing the EQIP ranking processes used at the state and local level on the NRCS Web site at *http://www.nrcs.usda.gov/programs/eqip.* NRCS intends to reward exceptional performance through the performance incentive funding.

NRCS received 162 comments on the approval of EQIP contracts by the Regional Conservationist when the contract totals more than $100,000. The comments related to the increased administrative burden and delay this requirement will have on the development of EQIP contracts and in producers implementing practices. The Department feels this is a necessary component of EQIP to assure that the program is implemented to achieve the stated EQIP program objective. Therefore, the requirement is maintained in the final EQIP rule.

More than 175 comments were received on the requirement that State Conservationist approved EQIP

contracts that included practices with cost share rates greater than 50 percent. The concern was the delay this would have on EQIP contract development and practice implementation. This requirement changed in the final rule (1466.23(d)) to allow the State Conservationist, with concurrence of the Regional Conservationist, to approve state and local EQIP practice cost lists that include any structural practice with a cost share rate greater than 50 percent. This change maintains the program objective of optimizing environmental benefits and improves program delivery compared to the proposed rule.

Section 1466.21 Contract Requirements

NRCS received 31 comments regarding the amount of an EQIP contract. Eight respondents support a $50,000 contract cap, 16 support a $450,000 contract limit and seven respondents support no limit. Another 34 responders suggested the $450,000 contract limit was an injustice against small farmers since only large farmers can afford 25 percent of $450,000. NRCS believes that, due to the large demand for the limited resources which have been made available for EQIP, a contract limit is appropriate at this time. The final rule will establish the maximum amount of financial assistance for an EQIP contract is $450,000.

NRCS also received 19 comments regarding statutory language. Three respondents opposed attribution of payments to individuals and support tracking payments to tax identification number of entities. Another 16 supported payments in the first year of a contract. The Department does not have flexibility to change either of these provisions. The statutory limit for payments to any individual or entity, directly or indirectly, for all EQIP contracts between 2002 and 2007 of $450,000 requires NRCS to track EQIP payments to an individual. NRCS has removed compliance with the triple entity rule (7 CFR 1400.301(a)) as an EQIP eligibility requirement.

Section 1466.22 Conservation Practice Operation and Maintenance

The Department received no comments relative to this section of the proposed rule.

Section 1466.23 Cost-Share Rates and Incentive Payment Levels

NRCS received a total of 638 comments related to the setting of cost-share rates and incentive payment levels. The proposed rule's preamble stated that NRCS intends to fund most structural practices at no more than 50 percent cost-share. Over 545 respondents recommended that cost-shares for structural practices should be no less than 75 percent as permitted by the 2002 Farm Bill. They suggested that this provision was analogous to a ''buy-down'' which was removed from the previous rule; is contrary to locally-led conservation philosophy, and detrimental to the producers who have suffered severe economic hardships over the last few years. Another 177 respondents identified that the requirement in section 1466.20 of the proposed rule that established the State Conservationist as the approving authority for any EQIP contract with a structural practice with a cost-share greater than 50 percent is an administrative burden. Another 10 respondents suggested providing 90 to 100 percent cost-share rates to limited resource producers/ranchers and beginning farmers/ranchers, or 75 percent cost-share for specific practices such as salinity control, diesel engine emission control, or wildlife plant species pollinators.

Two respondents suggested that a practice cap could be used in place of a reduced cost-share rate, 4 respondents expressed concern that the state and local decision-makers should be allowed to establish differential cost-share rates for practice that offer more environmental benefits, and three respondents suggested that producers required to develop a CNMP under the EPA CAFO/AFO rule should not be eligible for incentive payments for the development of a CNMP.

The setting of cost-share rates and incentive payment levels is the third component of optimizing environmental benefits. The guidance for optimizing environmental benefits in the proposed rule directs state and local decision-makers to identify the priority natural resource concerns and then select the most appropriate practices that will address those concerns and set rates to encourage the implementation of the best suited practices. The Department fully supports using locally-led conservation to identify the practices that will be used and setting the cost-share rates. Except for 100 percent cost-share, the final rule does not prohibit any of the recommendations received and allows for local innovation to structure a cost-effective program delivery. The Department feels the proposed rule provides the flexibility necessary for the state and local decision-makers to optimize program delivery. However, the final rule will require that the State Conservationist, with the Regional Conservationist's concurrence, must approve the EQIP cost-share lists used in the state.

NRCS received 11 comments opposing the guidance provided in the preamble of the proposed rule that ''no payments will be made for land management practices that are currently accepted and practiced in the agricultural community''. The Department believes that EQIP should provide cost-effective conservation. Producers who have not adopted commonly accepted techniques for their operation are in the minority and therefore the funds would most likely have a greater benefit when used for other practices. If, however, the particular circumstances warrant the implementation of these practices, the proposed rule does not prohibit the State Conservationist from offering assistance for them. The guidance will continue to be provided in the EQIP Program Manual.

An additional six respondents wanted assurance that the provision in the proposed rule to adjust EQIP cost-share to ensure that the combined financial contributions (all public and private sources) for a structural conservation practice will not exceed 100 percent and would not restrict additional cost-shares from non-USDA sources. It is not the intent of the Department to restrict additional cost-shares that a participant may receive from non-USDA sources but to achieve cost-effectiveness, USDA will reduce EQIP assistance when non-USDA assistance together with USDA assistance for a practice exceeds 100 percent. The Department does not support providing maximum cost-share to a participant when other source of assistance bring the total to more than 100 percent of the cost of installing a structural conservation practice.

Six respondents commented that State Tribal Conservation Advisory Council (TCAC) should be included in the setting of cost-share rates and determination of cost-share rates and incentive payment levels. Five commented that cost-share should remain at 75 percent for structural practices on Indian Nations because of the economic hardships for Indian Nations. The rule has not been amended. Under existing rules, TCAC can be a part of the State Technical Committee that provides advice to the State Conservationist for setting cost-share rates incentive payments.

Section 1466.24 EQIP Payments

Ten respondents commented that a social security number should not be the only number used to keep track of EQIP payments to individuals because it would create a burden for many Indians

who do not have them. Additional comments expressed concern for the requirement to collect all Tribal member names and numbers within the entity because Indian Tribes entering into EQIP contracts frequently have thousands of members who actually will not receive any portion of the EQIP payment. The rule has been amended to allow the use of individual Tribal enrollment numbers or other unique identification numbers in lieu of a social security number and only for those members who will receive a *pro rata* share of the EQIP payment. Tribal enrollment numbers (TEN) are unique to each individual tribal member. If the Tribal member does not have a TEN, then a social security number or other unique identifier will be used. Tribal member using the TEN identifier for payments received on tribal land will also use the TEN identified for all other EQIP contracts.

Six respondents did not want to be classified as an entity because of the perception that the Adjusted Gross Income (AGI) limitation would apply to Indian Tribes. Under 7 CFR 1400, Indian Tribes are exempt from the AGI qualifications.

Section 1466.25 Contract Modifications and Transfers of Land

The Department received no comments relative to this section of the proposed rule.

Section 1466.26 Contract Violations and Termination

The Department received no comments relative to this section of the proposed rule.

Section 1466.27 Conservation Innovation Grants

This section is reserved for future regulations that address implementation of Conservation Innovation Grants.

Section 1466.30 Appeals

The Department received no comments relative to this section of the proposed rule.

Section 1466.31 Compliance With Regulatory Measures

NRCS received 15 comments supporting using EQIP funds to assist private non-industrial forest land owners develop and prepare Habitat Conservation Plans (HCP). NRCS policy requires that all NRCS assistance must be compliant with all Federal, State and local laws. EQIP does not provide any authority to do otherwise. Therefore private landowners, corporations, State or local governments, or other non-Federal landowners who wish to conduct activities on their land that might incidentally harm (or ''take'') a species listed as endangered or threatened must first obtain an incidental take permit from the U.S. Fish and Wildlife Service. To obtain a permit, the applicant must develop a HCP, designed to offset any harmful effects the proposed activity might have on the species. The HCP process allows development to proceed while promoting listed species conservation. NRCS will provide guidance that will allow technical assistance to be used for the development of a HCP for EQIP assisted activities that adversely affect listed species but costs or fees associated with the permit acquisition will not be an eligible cost. This concept applies to all laws, rules, and regulations that may require remedial actions; the planning can be provided through EQIP assistance but permit fees and costs cannot.

Section 1466.32 Access to Operating Unit

NRCS received 4 comments recommending that an authorized agent of NRCS must first obtain permission before accessing a participant's property. NRCS believes there are numerous cases where a participant may be absent from the property for a lengthy period of time, or the participant is an absentee landowner or tenant who may not be easily contacted. In order to conduct its business in a timely manner in these cases, USDA believes a reasonable effort should be made to contact the participant prior to accessing the property to enable the participant to attend at the same time. The program guidance documents will stipulate that the NRCS must document in the participant's file the efforts made to notify the participant before accessing the operating unit. No change was made in the final rule concerning these comments.

Section 1466.33 Performance Based Upon Advice or Action of Representatives of NRCS

The Department received no comments relative to this section of the proposed rule.

Section 1466.34 Offsets and Assignments

The Department received no comments relative to this section of the proposed rule.

Section 1466.35 Misrepresentation and Scheme or Device

The Department received no comments relative to this section of the proposed rule.

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, Conservation, Natural Resources, Water Resources, Wetlands, Cost-Shares, Payment Rates.

■ Accordingly, part 1466 of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.

1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
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Subpart B—Contracts and Payments

1466.20 Application for contracts and selecting offers from producers.
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Subpart C—General Administration

1466.30 Appeals.
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1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of NRCS.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or device.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839–8

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Natural Resources Conservation Service (NRCS) provides assistance to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner and to assist producers in complying with environmental regulations. The purposes of the program are achieved by

implementing structural and land management conservation practices on eligible land.

§ 1466.2 Administration.

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities where applicable.

(b) NRCS and the Farm Service Agency (FSA) will consult, at the National level, in establishing policies, priorities, and guidelines related to the implementation of this part. FSA may continue to participate in EQIP through participation on State Technical Committees and Local Work Groups.

(c) NRCS supports ''locally-led conservation'' by using State Technical Committees at the state level and Local Work Groups at the county/parish level to advise NRCS on technical issues relating to the implementation of EQIP such as:

(1) Identification of priority natural resource concerns;

(2) Identification of which conservation practices should be eligible for financial assistance; and

(3) Establishment of cost-share rates and incentive payment levels.

(d) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS from determining any issues arising under this Part or from reversing or modifying any determination made under this Part.

(e) NRCS may enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations and individuals to assist NRCS with implementation of the program in this part.

§ 1466.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this Part, unless specified otherwise:

Agricultural land means cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, constituting a cohesive management unit for agricultural purposes. An agricultural operation shall be regarded as located in the county in which the principle dwelling is situated, or if there is no dwelling thereon, it shall be regarded to be in the county in which the major portion of the land is located.

Animal waste management facility means a structural conservation practice used for storing or treating animal waste.

Applicant means an individual, entity or joint operation who has an interest in a farming operation, as defined in 7 CFR 1400.3, who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species as determined by the State Technical Committee to need direct intervention to halt its population decline.

Beginning Farmer or Rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located

(ii) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, USDA, or designee.

Comprehensive Nutrient Management Plan (CNMP) means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Conservation district means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district,'' ''soil conservation district,'' ''soil and water conservation district,'' ''resource conservation district,'' ''land conservation committee,'' or similar name.

Conservation Innovation Grants means competitive grants made under EQIP to individuals, governmental and non-governmental organizations to stimulate innovative methods to leverage Federal funds to implement EQIP to enhance and protect the environment in conjunction with agricultural production.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any individual or entity who has been accepted to participate in the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of applying conservation practices as opposed to procurement contract.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing a structural conservation practice.

Cost-effectiveness refers to the least-cost practices or system that achieves the stated conservation objectives.

Designated Conservationist means a NRCS employee whom the State Conservationist has designated as responsible for administration of EQIP in a specific area.

Entity means those organizations as defined in 7 CFR 1400.3.

EQIP plan of operations means the identification, location and timing of conservation practices, both structural and land management, that the producer proposes to implement on eligible land in order to address the priority natural resource concerns and optimize environmental benefits.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for

planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the financial assistance from NRCS to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and the U.S. Government-owned land under Bureau of Indian Affairs jurisdiction.

Joint operation means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 1400.3.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Lifespan means the period of time during which a conservation practice is to be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than $100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data).

Liquidated damages means a sum of money stipulated in the EQIP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, buffalo, poultry, turkeys, swine, sheep, horses, goats, fish or other animals raised by aquaculture, or animals the State Conservationist identifies with the advice of the State Technical Committee.

Livestock production means farm or ranch operations involving the production, growing, raising, or reproduction of livestock or livestock products.

Local Work Group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to EQIP implementation.

National measures mean measurable criteria identified by the Chief of NRCS, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the National Priorities and statutory requirements.

National priorities means resource issues identified by the Chief of NRCS, with advice from other Federal agencies and State Conservationists, which will be used to determine the distribution of EQIP funds and guide local implementation of EQIP.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means a producer who is a party to an EQIP contract.

Person has the same meaning as set out in 7 CFR 1400.3.

Priority natural resource concern(s) means an existing or pending degradation of natural resource condition(s) as identified locally by the State Conservationist or Designee with advice from the State Technical Committee and Local Work Groups.

Producer means an individual or entity who is engaged in livestock or agricultural production.

Regional Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a NRCS region.

Related natural resources means natural resources that are associated with soil and water, including air, plants, and animals and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Secretary means the Secretary of the U. S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to: (1) Conduct conservation planning; conservation practice survey, layout, design, installation, and certification; (2) training, certification, and quality assurance of professional conservationists; and (3) evaluation and assessment of the producer's operation and maintenance needs.

Technical Service Provider means an individual, private-sector entity, or

public agency certified by NRCS to provide technical services to program participants or to NRCS.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals along with all other non-domesticated animals.

§ 1466.4 National Priorities.

(a) The following National priorities will be used in the implementation of EQIP:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with TMDLs where available as well as the reduction of groundwater contamination and the conservation of ground and surface water resources;

(2) Reduction of emissions, such as particulate matter, nitrogen oxides (NO_X), volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(3) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land; and

(4) Promotion of at-risk species habitat conservation.

(b) With the advice of other Federal agencies, NRCS will undertake periodic reviews of the National priorities and the effects of program delivery at the state and local level. The Chief intends to annually review the National priorities to adapt the program to address emerging resource issues. NRCS will:

(1) Use the National priorities to guide the allocation of EQIP funds to the State NRCS offices,

(2) Use the National priorities in conjunction with state and local priorities to assist with prioritization and selection of EQIP applications, and

(3) Periodically review and update the National priorities utilizing input from the public and affected stakeholders to ensure that the program continues to address national resource needs.

§ 1466.5 National Allocation and Management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the state and local level. In order to optimize the overall environmental benefits over the duration of the program, the Chief of NRCS will:

(a) Use an EQIP fund allocation formula that reflects National priorities and measures and that uses available natural resource and resource concerns data to distribute funds to the state level. This procedure will be updated periodically to reflect adjustments to National priorities and information about resource concerns and program performance. The data used in the allocation formula will be updated as it becomes available.

(b) Provide a performance incentive to NRCS in States that demonstrate a high level of program performance in implementing EQIP. Performance incentives shall consider factors such as strategically planning EQIP implementation, effectively addressing National priorities and measures and state and local resource concerns, the effectiveness of program delivery, the use of Technical Service Providers, and the number of contracts with Limited Resource Producers and Beginning Farmers. These funds will be made available annually from a reserve established at the National level when funds become available.

(c) Use NRCS's accountability system to establish state level EQIP performance goals and treatment objectives.

(d) Ensure that National, state and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, allocation of base and reserve funds, and program achievements is made available to the public.

(e) Consult with State Conservationists and other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with advice from the State Technical Committee and Local Work Groups, to determine how funds will be used and how the program will be administered to achieve National priorities and measures in each state.

(g) Move towards assessment, evaluation and accountability based on actual natural resource and environmental outcomes and results.

§ 1466.6 State Allocation and Management.

The State Conservationist will:

(a) Identify State priority natural resource concerns with the advice of the State Technical Committee that directly contribute towards meeting National priorities and measures and will use NRCS's accountability system to establish local level EQIP performance goals and treatment objectives;

(b) Identify, as appropriate and necessary, Designated Conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas, and

(c) Use the following to determine how to manage the EQIP program and how to allocate funds within a state:

(1) The nature and extent of priority natural resource concerns at the state and local level;

(2) The availability of human resources, incentive programs, education programs, and on-farm research programs from Federal, State, Indian Tribe, and local levels, both public and private, to assist with the activities related to the priority natural resource concerns;

(3) The existence of multi-county and/or multi-state collaborative efforts to address regional priority natural resource concerns;

(4) Ways and means to measure performance and success; and

(5) The degree of difficulty that producers face in complying with environmental laws.

§ 1466.7 Outreach Activities.

NRCS will establish program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems and priority natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian Tribes, Alaska Natives, and Pacific Islanders.

§ 1466.8 Program requirements.

(a) Program participation is voluntary. The applicant develops an EQIP plan of perations for the agricultural land to be treated that serves as the basis for the EQIP contract. NRCS provides participants with technical assistance, cost-share and/or incentive payments to apply needed conservation practices and land-use adjustments.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12.

(2) Have an interest in the farming operation as defined in 7 CFR 1400.3.

(3) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide the Chief of NRCS with the written

concurrence of the landowner in order to apply a structural conservation practice.

(4) Submit an EQIP plan of operations that is acceptable to NRCS as being in compliance with the terms and conditions of the program; and

(5) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and eligibility as per Adjusted Gross Income, 7 CFR 1400 subpart G.

(c) Land used as cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a threat to soil, water, air, or related natural resources, may be eligible for enrollment in EQIP. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit; and

(ii) The conservation practices will contribute to an improvement in the identified natural resource concern; or

(3) Tribal, allotted, or Indian trust land.

(d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands directly attributable to livestock production, as measured at the National level.

§ 1466.9 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be carried out in accordance with the applicable NRCS field office technical guide.

(b) The EQIP plan of operations must include:

(1) A description of the participant's specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing and sequence; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(c) If an EQIP plan of operations includes an animal waste storage or treatment facility, the participant must provide for the development and implementation of a comprehensive nutrient management plan.

(d) Participants are responsible for implementing the EQIP plan of operations.

(e) A participant may receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by section 1240I of the 1985 Act, 16 U.S.C. 3839aa–9, only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

§ 1466.10 Conservation practices.

(a) NRCS will determine which structural and land management practices are eligible for program payments. A list of eligible practices will be available to the public.

(b) Cost-share and incentive payments will not be made to a participant for a conservation practice that the applicant has applied prior to application for the program.

(c) Cost-share and incentive payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or Designated Conservationist prior to the installation of the practice.

(d) A participant will be eligible for cost-share or incentive payments for irrigation related structural and land management practices only on land that has been irrigated for two of the last five years prior to application for assistance.

(e) Where new technologies or conservation practices that provide a high potential for optimizing environmental benefits have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

§ 1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Participants may use technical and other assistance from qualified personnel of other Federal, State, and local agencies, Indian Tribes, or individuals who are certified as Technical Service Providers by NRCS.

(c) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to; conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists. Payments to certified Technical Service Providers will be made only for an application that has been approved for payments.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving EQIP payments.

Subpart B—Contracts and Payments

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP. Applications are accepted throughout the year. Producers who are members of a joint operation may file a single application for the joint operation.

(b) The State Conservationist or Designated Conservationist with advice from the State Technical Committee or Local Work Groups will develop a ranking process to prioritize applications for funding which address priority natural resource concerns. The State Conservationist or Designated Conservationist will periodically select for funding the highest ranked applications based on applicant eligibility and the NRCS ranking process. The State Conservationist or Designated Conservationist will rank all applications according to the following factors:

(1) The degree of cost-effectiveness of the proposed conservation practices,

(2) The magnitude of the environmental benefits resulting from the treatment of National priorities and the priority natural resource concerns reflecting the level of performance of a conservation practice,

(3) Treatment of multiple resource concerns,

(4) Use of conservation practices that provide environmental enhancements for a longer period of time,

(5) Compliance with Federal, state, local or tribal regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation, and

(6) Other locally defined pertinent factors, such as the location of the

conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(c) If the State Conservationist determines that the environmental values of two or more applications for cost-share payments or incentive payments are comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

(d) The ranking will not give preferential treatment to applications based on size of the operation.

(e) The ranking will determine which applications will be awarded contracts. The approving authority for EQIP contracts will be the State Conservationist or designee except the approving authority for any EQIP contract greater than $100,000 is the NRCS Regional Conservationist.

(f) The State Conservationist will make all information regarding priority resources concerns, how the EQIP program is implemented in the state, and the cost-list of eligible practices available to the public.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Cost-share payments and incentive payments as well as reimbursement for Technical Service Provider technical assistance may be included in a contract.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, the operation and maintenance requirements for the practices, and applicable cost-shares and incentive payments allocated to the practices under the contract;

(2) Be for a minimum duration of one year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not implement any practices on the farm or ranch unit under the contract, or agricultural operation of the producer for ground and surface water conservation contracts, that would tend to defeat the purposes of the program;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1466.25;

(iv) Implement a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility; and

(v) Supply information as may be required by NRCS to determine compliance with the contract and requirements of the program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1466.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must start at least one financially assisted practice within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start a practice within the first year of the contract, they can request a waiver from the State Conservationist.

(d) Each contract will be limited to no more than $450,000.

§ 1466.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of conservation practices applied under the contract. The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon must be operated and maintained as specified in the contract. NRCS may periodically inspect a conservation practice during the lifespan of the practice as specified in the contract to ensure that operation and maintenance are occurring. When NRCS finds that a participant is not operating and maintaining practices in an appropriate manner, NRCS will request a refund of cost-share or incentive payments made for that practice under the contract.

§ 1466.23 Cost-share rates and incentive payment levels.

(a) Determining Cost-share payment rates.

(1) The maximum cost-share payments made to a participant under the program will not be more than 75 percent of the actual cost of a structural practice, as determined by the State Conservationist or Designated Conservationist, except that for a Limited Resource Farmer or Rancher or Beginning Farmer and Rancher cost-share payments may be up to 90 percent, as determined by the State Conservationist or Designated Conservationist.

(2) The cost-share payments to a participant under the program will be reduced proportionately below the rate established by the State Conservationist or Designated Conservationist, or the cost-share limit as set in paragraph (c) of this section, to the extent that total financial contributions for a structural practice from all public and private sources exceed 100 percent of the actual cost of the practice.

(b) Determining Incentive Payment levels. NRCS may provide incentive payments to participants for performing a land management practice or to develop a comprehensive nutrient management plan in an amount and at a rate necessary to encourage a participant to perform the practice that would not otherwise be initiated without government assistance. The State Conservationist or Designated Conservationist, with the advice of the State Technical Committee or Local Work Groups, may consider establishing limits on the extent of land management practices that may be included in a contract.

(c) Cost-share rates and incentive payment levels for conservation practices will be established by the State Conservationist or Designated Conservationist with advice from the State Technical Committee and Local Work Groups. The State Conservationist or Designated Conservationist will develop a list of eligible conservation practices with varied cost-share rates and incentive payment levels that considers:

(1) The conservation practice cost-effectiveness and innovation,

(2) The degree of treatment of priority natural resource concerns,

(3) The number of resource concerns the practice will address,

(4) The longevity of the practice's environmental benefits, and

(5) Other pertinent local considerations.

(d) Practice cost lists that include any structural practice with greater than 50 percent cost share rate are to be approved by the State Conservationist with concurrence of the Regional Conservationist.

§ 1466.24 EQIP payments.

(a) Except as provided in paragraph (b) of this section, the total amount of cost-share and incentive payments paid to an individual or entity under this part may not exceed an aggregate of $450,000, directly or indirectly, for all contracts entered into during FYs 2002 through 2007.

(b) To determine eligibility for payments, NRCS will use the following criteria:

(1) The provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility, subparts A and G.

(2) States, political subdivisions, and entities thereof will not be considered to be individuals or entities eligible for payment.

(3) To be eligible to participate in EQIP, all individuals applying, either alone or as part of a joint operation, must provide a social security number. Where applicable; American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(4) To be eligible to participate in EQIP, any entity, as identified in 7 CFR part 1400, must provide a list of all members of the entity and embedded entities along with the members' social security numbers and percentage interest in the entity.

(5) With regard to contracts on Indian Land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA or a Tribal official certifies in writing that no one individual directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, listing of individuals and payments made, by social security number or other unique identification number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.

(6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

(7) Eligibility for payments in accordance with 7 CFR part 1400, subpart G, average adjusted gross income limitation, will be determined at the time of contract approval.

(8) Eligibility for higher cost-share payments in accordance with paragraph (a) of this section will be determined at the time of approval of the contract.

(9) Any participant that utilizes a unique identification number as an alternative to a social security number will utilize only that identifier for any and all other EQIP contracts that the participant is party to. Violators will be considered to have provided fraudulent representation and be subject to full penalties of section 1466.35.

(10) A participant will not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same practice on same land under any other conservation program administered by USDA.

(11) Before NRCS will approve and issue any cost-share or incentive payment, the participant must certify that the conservation practice has been completed in accordance with the contract, and NRCS or other approved Technical Service Provider certifies that the practice has been carried out in accordance with the conservation practice standards of the applicable NRCS field office technical guide.

(12) The provisions of 7 CFR 1412.505 except that refunds will be determined by the State Conservationist.

§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification and the EQIP plan of operations is revised in accordance with NRCS requirements and is approved by the Designated Conservationist.

(b) The participant and NRCS may agree to transfer a contract to another producer. The transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) NRCS may require a participant to refund all or a portion of any financial assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

§ 1466.26 Contract violations and termination.

(a)(1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS shall give the participant a reasonable time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant will forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with 7 CFR part 1403. NRCS may exercise the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the lifespan of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract, the participant will forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. NRCS will have the option to waive the liquidated damages, depending upon the circumstances of the case.

(3) When making contract termination decisions, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS determines that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

§ 1466.27 Conservation Innovation Grants.

[Reserved]

Subpart C—General Administration

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with 7 CFR parts 11 and 614. Determination

in matters of general applicability, such as payment rates, payment limits, and cost-share percentages, the designation of identified priority natural resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA Technical Service Provider will remain with the certified Technical Service Provider and will not be assumed by NRCS when NRCS authorizes payment.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Signed in Washington, DC on May 15, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 03–13024 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–10–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a final rule amending its involuntary liquidation regulation to designate swap agreements (swaps) as qualified financial contracts (QFCs). Treatment of swaps as QFCs will limit swap counterparty exposure when a federally-insured credit union is placed into involuntary liquidation or a conservatorship and thereby encourage entities to engage in swaps with federally-insured credit unions. Treatment of swaps as QFCs will also help preserve market stability.

EFFECTIVE DATES: This rule is effective June 30, 2003.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6555.

SUPPLEMENTARY INFORMATION:

A. Background

On February 20, 2003, NCUA issued a proposed rule that would add § 709.13 to NCUA's involuntary liquidation regulation to designate swaps as QFCs. 68 FR 8860, February 26, 2003; 12 CFR part 709.

As discussed in the preamble to the proposed rule, section 207 of the Federal Credit Union Act (FCU Act) contains provisions concerning the treatment of QFCs in liquidation or conservatorship. 12 U.S.C. 1787(c)(3), (8). Generally, these QFC provisions enable a QFC counterparty to exercise its contractual rights to terminate and net QFCs and protect itself against the selective assumption of QFCs by a liquidating agent or conservator. QFC treatment limits counterparty exposure and preserves market stability when a credit union with QFCs enters liquidation or conservatorship.

Section 207 of the FCU Act also provides that ''the term 'qualified financial contract' means any securities contract, forward contract, repurchase agreement, and any similar agreement that the [NCUA] Board determines by regulation to be a qualified financial contract for purposes of this paragraph.'' 12 U.S.C. 1787(c)(8)(D)(i). The Board has determined that swaps are similar to those agreements enumerated in the FCU Act's definition and should be recognized as QFCs. *See* H.R. Rep. No. 101–484 at 1 (recognizing that swaps are ''similar'' to forward contracts, securities contracts, and repurchase agreements), to accompany Pub. L. 101–311 (Bankruptcy: Swap Agreements and Forward Contracts), *reprinted in* 1990 U.S.C.C.A.N. 223. This Board determination that swaps receive QFC treatment will provide greater certainty about the treatment of swaps if a federally-insured credit union is placed into involuntary liquidation or a conservatorship and will encourage

counterparties to engage in swaps with credit unions. This final rule also parallels the Federal Deposit Insurance Act's treatment of swaps involving banks. 12 U.S.C. 1821(e)(8)(D)(i), (vi), (vii).

As stated in the preamble to the proposed rule, the Board has determined that it will exercise its discretion as liquidating agent or conservator and provide swaps with QFC treatment if there is a liquidation or conservatorship involving swaps before this final rule is effective.

B. Comments

The Board received thirteen comment letters on the proposed rule: five from corporate credit unions, three from natural person credit unions, and five from credit union trade organizations.

All thirteen commenters expressed support for designating swaps as QFCs. Nine of the thirteen commenters recommended that the language of the proposed rule be amended to clarify that any master agreement involving swaps will be treated as a swap. The Board agrees with this recommended clarification and has added language to the final rule paralleling a similar provision in the Federal Deposit Insurance Act. 12 U.S.C. 1821(e)(8)(D)(vii).

One commenter asked that the new rule state explicitly that any conservator or liquidating agent of a credit union would be obligated to recognize all of the rights of QFC counterparties set out in section 207(c)(8)(A) of the FCU Act. 12 U.S.C. 1787(c)(8)(A). This commenter believes section 207(c)(8)(A) of the FCU Act contains an erroneous cross-reference to section 207(c)(12) of the FCU Act and that adoption of the commenter's proposed language would cure this error. 12 U.S.C. 1787(c)(12). The Board agrees that this cross-reference to section 207(c)(12) is erroneous. The correct cross-reference should be to section 207(c)(10), as indicated by comparison with parallel provisions in the Federal Deposit Insurance Act. 12 U.S.C. 1787(c)(8)(A) and 1821(e)(8)(A). Although the Board cannot issue a regulation for purposes of correcting a statute, the Board will limit its discretion when acting as a liquidating agent or conservator to allow counterparties to exercise their rights under section 207(c)(8)(A) as if that section contained a cross-reference to section 207(c)(10), not section 207(c)(12). The Board also notes the House of Representatives recently approved a bill that would, if enacted into law, correct this error. Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, H.R. 975, Title IX (Toomey Amendment).

Another commenter asked that the Board also designate commodity contracts as QFCs. The proposed rule did not address commodity contracts, and, therefore, they are beyond the scope of this final rule. Furthermore, the Board notes that natural person federal credit unions do not currently have the authority to enter into commodity contracts and that corporate credit unions may not enter into commodity contracts unless specifically authorized to engage in commodity contracts under their expanded authorities. *See* 12 CFR part 703 and 12 CFR part 704, Appendix B, Part IV.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The Board believes it unlikely that any small federally-insured credit unions engage in swaps. Accordingly, the Board believes that the final rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA has recommended to The Office of Management and Budget that it determine that this final rule is not a major rule, and is awaiting its determination.

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. NCUA requested comment on whether the proposed rule met this standard. No commenters addressed the issue.

List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board on May 22, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 709 as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

■ 1. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1786(h), 12 U.S.C. 1787, 12 U.S.C. 1788, 12 U.S.C. 1789, 12 U.S.C. 1789a.

■ 2. Add § 709.13 to read as follows:

§ 709.13 Treatment of swap agreements in liquidation or conservatorship.

The Board has determined that a swap agreement, as defined in the Federal Deposit Insurance Act at 12 U.S.C. 1821(e)(8)(D)(vi), is a qualified financial contract for purposes of the special treatment for qualified financial contracts provided in 12 U.S.C. 1787(c).

Any master agreement for any swap agreement, together with all supplements to such master agreement, will be treated as one swap agreement.

[FR Doc. 03–13343 Filed 5–29–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15256; Airspace Docket No. 03–ACE–49]

Modification of Class E Airspace; Falls City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 14 ORIGINAL Standard Instrument Approach Procedure (SIAP) and an RNAV (GPS) RWY 32 ORIGINAL SIAP have been developed to serve Brenner Field, Falls City, NE. The Nondirectional Radio Beacon (NDB) A SIAP that serves Brenner Field has been amended. These actions require an expansion of Class E airspace extending upward from 700 feet above ground level (AGL) at Falls City, NE to contain aircraft executing the approach procedures. The Brenner Field airport reference point has been redefined and is incorporated into the legal description of Falls City, NE Class E airspace.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before July 10, 2003.

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–2003–15256/ Airspace Docket No. 03–ACE–49; at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area at Falls City, NE. An RNAV (GPS) RWY 14 ORIGINAL SIAP and an RNAV (GPS) RWY 32 ORIGINAL SIAP have been developed to serve Brenner Field, Falls City, NE. The Nondirectional Radio Beacon (NDB) A SIAP that serves Brenner Field has been amended. These SIAPs require additional controlled airspace to contain aircraft executing the approach procedures. This action expands Class E airspace extending upward from 700 feet AGL at Falls City, NE. A review of the Falls City, NE Class E airspace revealed a discrepancy in the Falls City, Brenner Field, NE airport reference point. Class E controlled airspace at Falls City, NE is defined, in part, by the Brenner Field airport reference point. This action corrects the discrepancy between the previous and revised airport reference points by modifying the Falls City, NE Class E airspace area. It incorporates the revised Brenner Field airport reference point in the Class E airspace legal description and brings the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The 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 7400.9K, dated August 30, 2002, and effective September 16, 2002, 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–2003–15256/Airspace Docket No. 03–ACE–49.'' 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 12132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse 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, Incorporated 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 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE NE E5 Falls City, NE

Falls City, Brenner Field, NE
(Lat. 40°04′44″ N., long. 95°35′31″ W)
Brenner NDB
(Lat. 40°04′35″ N., long. 95°35′13″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Brenner Field and within 2.6 miles each side of the 142° bearing from the Brenner NDB extending from the 6.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on May 23, 2003.

Donald F. Hensley,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–13540 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30370; Amdt. No. 3060]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective May 30, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these

SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 23, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
08/24/01	MO	St. Louis	Lambert-St. Louis Intl	1/8857	VOR Rwy 6, Orig.
05/06/03	ME	Rockland	Knox County Regional	3/3439	ILS Rwy 13, Amdt 1A.
05/06/03	ME	Rockland	Knox County Regional	3/3440	NDB Rwy 31, Orig-A.
05/06/03	ME	Rockland	Knox County Regional	3/3441	NDB Rwy 3, Orig.
05/06/03	ME	Rockland	Knox County Regional	3/3442	GPS Rwy 31, Orig-B.
05/09/03	RI	Providence	Theodore Francis Green State	3/3531	VOR Rwy 5R, Amdt 13C.
05/09/03	RI	Providence	Theodore Francis Green State	3/3532	NDB Rwy 5R, Amdt 15C.
05/09/03	RI	Providence	Theodore Francis Green State	3/3533	ILS Rwy 5R, Amdt 17.
05/09/03	RI	Providence	Theodore Francis Green State	3/3534	ILS Rwy 5R (Cat II), Amdt 17.
05/09/03	RI	Providence	Theodore Francis Green State	3/3535	ILS Rwy 5R (Cat III), Amdt 17.
05/09/03	RI	Providence	Theodore Francis Green State	3/3536	ILS Rwy 23L, Amdt 4C.
05/14/03	ME	Augusta	Augusta State	3/3647	ILS Rwy 17, Amdt 2B.
05/15/03	PA	Bradford	Bradford Regional	3/3743	ILS Rwy 32, Amdt 11.
05/16/03	HI	Lihue	Lihue	3/3785	RNAV (GPS) Rwy 35, Orig.
05/16/03	PA	Doylestown	Doylestown	3/3793	NDB Rwy 23, Amdt 2A.
05/19/03	CA	Long Beach	Long Beach (Daugherty Field)	3/3862	ILS Rwy 30, Amdt 32A.
05/20/03	MI	Hastings	Hastings	3/3840	VOR Rwy 12, Orig-B.
05/20/03	IA	Clinton	Clinton Muni	3/3910	ILS Rwy 3, Amdt 4.
05/20/03	IA	Clinton	Clinton Muni	3/3911	NDB Rwy 3, Amdt 6A.

[FR Doc. 03–13543 Filed 5–29–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4378]

RIN 1400–AB53

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Additional International Organization

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule implements regulations relating to the visa status of personnel of INTELSAT after privatization of that organization. This rule makes final the interim rule, which added INTELSAT (following privatization) to the regulatory definition of ''international organization'', but only for purposes of the Immigration and Nationality Act. The rule also clarifies the status of the organization and the personnel affected.

EFFECTIVE DATE: This rule is effective May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221, e-mail *harperbj@state.gov,* or fax at (202) 663–3898.

SUPPLEMENTARY INFORMATION:

What Is the Background of This Rule?

Section 301 of Public Law 106–396 (47 U.S.C. 763, Oct. 30, 2000) permits certain aliens who were officers or employees of INTELSAT before its privatization and who obtained and had maintained the status of ''international organization alien'' under the terms of section 101(a)(15)(G) of the Immigration and Nationality Act (INA) for the requisite period to continue to be eligible for such classification as long as they are officers or employees of INTELSAT or any successor or separated entity of INTELSAT. It also provides that, despite its privatization,

INTELSAT or any successor or separated entity will continue to qualify as an ''international organization'' for purposes of the special immigrant provision of INA 101(a)(27)(I), relating to certain international organization aliens and family members.

On January 11, 2002, the Department published an interim rule to implement these new provisions, and on April 17, 2002, the Department published a second interim rule to revise the interim regulation to further clarify the status of privatized INTELSAT and the personnel affected. As made clear in the second interim rule, Public Law 106–396 confers the status of international organization on privatized INTELSAT only in connection with the special immigrant provision in INA section 101(a)(27)(I). It also allows certain officers and employees of privatized INTELSAT to retain their G–4 status despite the fact that INTELSAT, once privatized, no longer meets the definition of international organization for purposes of visa classification under INA 101(a)(15)(G). Additionally, as the second interim rule clarified, Public Law 106–396 does not provide for G–5 status for servants of privatized INTELSAT officers and employees.

Were Comments Solicited on This Rule?

The Department solicited comments to be received no later than June 17, 2002. No comments were received.

Final Rule

■ The Department's interim rule published on April 17, 2002 [67 FR 18821] provided all the amendments to 22 CFR 41.24. Since there are no further amendments necessary to the Department's interim rule, the Department does not feel it necessary to republish the text of the interim. The interim rule is therefore being incorporated herein as a final rule.

Dated: May 6, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–13553 Filed 5–29–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Definition for Multipurpose Dry-Chemical Fire Extinguisher

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Technical amendment.

SUMMARY: This technical amendment moves the definition for *multipurpose dry-chemical fire extinguisher* in subparts C and E of 30 CFR parts 56 and 57 to the general definitions section in subpart A of these parts. This action is necessary to eliminate confusion regarding compliance with the requirements for multipurpose dry-chemical fire extinguishers caused by it having two definitions, one in subpart A and a different one in subparts C and E.

EFFECTIVE DATES: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: (202) 693–9440; FAX: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*.

SUPPLEMENTARY INFORMATION:

Regulatory History

The definition for *multipurpose dry-chemical fire extinguisher* in subpart A of existing 30 CFR 56/57.2 states—

> *Multipurpose dry-chemical fire extinguisher* means a listed or approved multipurpose dry-chemical fire extinguisher having a minimum rating of 2–A:10–B:C, by Underwriters Laboratories, Inc., and containing a minimum of 4.5 pounds of dry-chemical agent.

In 1985, MSHA promulgated a final rule [50 FR 4022] revising its ''Fire Prevention and Control'' standards for metal and nonmetal mines in subpart C of 30 CFR parts 56 and 57. The definition for *multipurpose dry-chemical fire extinguisher* in final §§ 56/57.4000 states—

> An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

In 1991, MSHA promulgated a final rule [56 FR 46508] revising its ''Explosives'' standards for metal and nonmetal mines in subpart E of 30 CFR parts 56 and 57. The definition for *multipurpose dry-chemical fire extinguisher* in final §§ 56/57.6000 of ''Subpart E—Explosives'' is identical to that contained in §§ 56/57.4000 of ''Subpart C—Fire Prevention and Control.''

With the publication of the final rules for ''Subpart C—Fire Prevention and Control'' and ''Subpart E—Explosives,'' the definition for *multipurpose dry-chemical fire extinguisher* in subpart A became irrelevant because this term is used only in subparts C and E.

Discussion of Changes

The definition for *multipurpose dry-chemical fire extinguisher* in subpart A (§§ 56/57.2) differs from the one in subpart C (§§ 56/57.4000) and subpart E (§§ 56/57.6000) in two ways. First, the definition in subpart A uses the word ''minimum'' instead of ''nominal'' in characterizing the amount of dry-chemical agent required. The preamble to the final rule for ''Subpart C—Fire Prevention and Control,'' however, states that—

> * * * Because fire equipment manufacturers designate the weight of dry-chemical agent in an extinguisher by ''nominal'' weight rather than by ''minimum'' weight, the final rule uses the term ''nominal'' and clarifies that the nominal weight must be 4.5 pounds or more.

Second, the definition in subpart A specifies that the multipurpose dry-chemical fire extinguisher be ''listed or approved * * * by Underwriters Laboratories, Inc.'' The preamble to the final rule for ''Subpart C—Fire Prevention and Control,'' however, states that—

> The final rule defines multipurpose dry-chemical fire extinguishers as those meeting at least the nationally recognized criteria for extinguishers with a 2–A:10–B:C rating. * * * Approval organizations, such as the Underwriters Laboratories, Inc. and Factory Mutual Research Corporation test and list fire extinguishers meeting this rating.

Although the more recent definition in subparts C and E differs slightly from subpart A, the intent of the definition remains the same. This disparity, however, has created confusion for some fire extinguisher manufacturers and mine inspectors.

To eliminate any confusion and redundancy, this technical amendment (1) replaces the outdated and unnecessary definition for *multipurpose dry-chemical fire extinguisher* in subpart A of 30 CFR parts 56 and 57 with the most current definition from subparts C and E of these parts; and (2) removes the redundant definitions of *multipurpose dry-chemical fire extinguisher* from subparts C and E.

List of Subjects in 30 CFR Parts 56 and 57

Fire prevention, Mine safety and health.

Dated: May 16, 2003.

John R. Correll,

Acting Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 56.2 is amended by revising the definition for *Multipurpose dry-chemical fire extinguisher* to read as follows:

§ 56.2 Definitions.

* * * * *

Multipurpose dry-chemical fire extinguisher means an extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

■ 3. Section 56.4000 is amended by removing the definition for *Multipurpose dry-chemical fire extinguisher.*

■ 4. Section 56.6000 is amended by removing the definition for *Multipurpose dry-chemical fire extinguisher.*

PART 57—[AMENDED]

■ 5. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 6. Section 57.2 is amended by revising the definition for *Multipurpose dry-chemical fire extinguisher* to read as follows:

§ 57.2 Definitions.

* * * * *

Multipurpose dry-chemical fire extinguisher means an extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

* * * * *

■ 7. Section 57.4000 is amended by removing the definition for *Multipurpose dry-chemical fire extinguisher.*

■ 8. Section 57.6000 is amended by removing the definition for *Multipurpose dry-chemical fire extinguisher.*

[FR Doc. 03–13498 Filed 5–22–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA66

TRICARE Program; Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; correction.

SUMMARY: This final rule is republished to correct errors originally published. It is to implement section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. This benefit, which has been named TRICARE for Life (TFL), was implemented on October 1, 2001, under an interim final rule published in the **Federal Register** on August 3, 2001.

DATES: This rule was effective October 1, 2001.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3572.

SUPPLEMENTARY INFORMATION: For background information on this rule, see the original submission published on April 30, 2003 (68 FR 23030).

List of Subjects in 32 Part 199

Claims, Handicapped, Health insurance, Military personnel.

■ Accordingly, 32 CFR part 199 is amended to read as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. chapter 55.

■ 2. Section 199.2(b) is amended by revising the definition for *Director, TRICARE Management Activity.*

§ 199.2 Definitions.

* * * * *

(b) * * *

Director, TRICARE Management Activity. This term includes the Director, TRICARE Management Activity, the official sometimes referred to in this part as the Director, Office of CHAMPUS (or OCHAMPUS), or any designee of the Director, TRICARE Management Activity or the Assistant Secretary of Defense for Health Affairs who is designated for purposes of an action under this part.

■ 3. Section 199.3 is amended by revising paragraphs (b)(2)(i)(D) (f)(3)(vi), and (f)(3)(vii) and the note following paragraph (f)(3)(vii), to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section; and

* * * * *

(f) * * *

(3) * * *

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii), and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available.)

(vii) Attainment of age 65, except for dependents of active duty members, beneficiaries not entitled to part A of Medicare, beneficiaries entitled to Part A of Medicare who have enrolled in Part B of Medicare, and as provided in paragraph (b)(3) of this section. For those who do not retain CHAMPUS, CHAMPUS eligibility is lost at 12:01 a.m. on the first day of the month in which the beneficiary becomes entitled to Medicare.

Note: If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration, ''Notice of Disallowance'' certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act) retain eligibility under CHAMPUS (refer to § 199.8 for additional information when a double coverage situation is involved).

* * * * *

■ 4. Section 199.8 is amended by revising paragraphs (c)(6) and (d)(1) to read as follows:

§ 199.8 Double coverage.

* * * * *

(c) * * *

(6) *Lack of payment by double coverage plan.* Amounts that have been denied by a double coverage plan simply because a claim was not filed timely or because the beneficiary failed to meet some other requirement of coverage cannot be paid. If a statement from the double coverage plan as to how much that plan would have paid ha the claim met the plan's requirements is provided to the CHAMPUS contractor, the claim can be processed as if the

double coverage plan actually paid the amount shown on the statement. If no such statement is received, no payment from CHAMPUS is authorized.

* * * * *

(d) *Special considerations.* (1) CHAMPUS and Medicare.—(i) General rule. In any case in which a beneficiary eligible for both Medicare and CHAMPUS receives medical or dental care for which payment may be made under Medicare and CHAMPUS, Medicare is always the primary payer. For dependents of active duty members, payment will be determined in accordance to paragraph (c) of this section. For all other beneficiaries eligible for Medicare, the amount payable by CHAMPUS shall be the amount of the actual out-of-pocket costs incurred by the beneficiary for that care over the sum of the amount paid for that care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare.

(ii) *Payment limit.* The total CHAMPUS amount payable for care under paragraph (d)(1)(i) of this section may not exceed the total amount that would be paid under CHAMPUS if payment for that care was made solely under CHAMPUS.

(iii) *Application of general rule.* In applying the general rule under paragraph (d)(1)(i) of this section, the first determination will be whether payment may be made under Medicare. For this purpose, Medicare exclusions, conditions, and limitations will be based for the determination.

(A) For items or services or portions or segments of items or services for which payment may be made under Medicare, the CHAMPUS payment will be the amount of the beneficiary's actual out of pocket liability, minus the amount payable by Medicare, also minus amount payable by other third party payers, subject to the limit under paragraph (d)(1)(ii) of this section.

(B) For items or services or segments of items or services for which no payment may be made under Medicare, the CHAMPUS payment will be the same as it would be for a CHAMPUS eligible retiree, dependent, or survivor beneficiary who is not Medicare eligible.

(iv) *Examples of applications of general rule.* The following examples are illustrative. They are not all-inclusive.

(A) In the case of a Medicare-eligible beneficiary receiving typical physician office visit services, Medicare payment generally will be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(A) of this section.

(B) In the case of a Medicare-eligible beneficiary residing and receiving medical care overseas, Medicare payment generally may not be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(B) of this section.

(C) In the case of a Medicare-eligible beneficiary receiving skilled nursing facility services a portion of which is payable by Medicare (such as during the first 100 days) and a portion of which is not payable by Medicare (such as after 100 days), CHAMPUS payment for the first portion will be determined consistent with paragraph (d)(1)(iii)(A) of this section and for the second portion consistent with paragraph (d)(1)(iii)(B) of this section.

(v) *Application of catastrophic cap.* Only in cases in which CHAMPUS payment is determined consistent with paragraph (d)(1)(iii)(B) of this section, actual beneficiary out of pocket liability remaining after CHAMPUS payments will be counted for purposes of the annual catastrophic loss protection, set forth under Sec. 199.4(f)(10). When a family has met the cap, CHAMPUS will pay allowable amounts for remaining covered services through the end of that fiscal year.

(vi) *Effect of enrollment in Medicare+Choice plan.* In the case of a beneficiary enrolled in a Medicare+Choice plan who receives items or services for which payment may be made under both the Medicare+Choice plan and CHAMPUS, a claim for the beneficiary's normal out-of-pocket costs under the Medicare+Choice plan may be submitted for CHAMPUS payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare+Choice plan.

(vii) Effect of other double coverage plans, including medigap plans. CHAMPUS is second payer to other third-party payers of health insurance, including Medicare supplemental plans.

(viii) Effect of employer-provided insurance. In the case of individuals with health insurance due to their current employment status, the employer insurance plan shall be first payer, Medicare shall be the second payer, and CHAMPUS shall be the tertiary payer.

* * * * *

■ 5. Section 199.10 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 199.10. Appeal and hearing procedures.

(a) * * *

(1) * * *

(ii) Effect of initial determination.

(A) The initial determination is final unless appealed in accordance with this chapter, or unless the initial determination is reopened by the TRICARE Management Activity, the CHAMPUS contractor, or the CHAMPUS peer review organization.

(B) An initial determination involving a CHAMPUS beneficiary entitled to Medicare Part A, who is enrolled in Medicare Part B, may be appealed by the beneficiary or their provider under this section of this Part only when the claimed services or supplies are payable by CHAMPUS and are not payable under Medicare. Both Medicare and CHAMPUS offer an appeal process when a claim for healthcare services or supplies is denied and most healthcare services and supplies are a benefit payable under both Medicare and CHAMPUS. In order to avoid confusion on the part of beneficiaries and providers and to expedite the appeal process, services and supplies denied payment by Medicare will not be considered for coverage by CHAMPUS if the Medicare denial of payment is appealable under Medicare. Because such claims are not considered for payment by CHAMPUS, there can be no CHAMPUS appeal. If, however, a Medicare claim or appeal results in some payment by Medicare, the services and supplies paid by Medicare will be considered for payment by CHAMPUS. In that situation, any decision to deny CHAMPUS payment will be appealable under this section. The following examples of CHAMPUS appealable issues involving Medicare-eligible CHAMPUS beneficiaries are illustrative; they are not all-inclusive.

(1) If Medicare processes a claim for a healthcare service or supply that is a Medicare benefit and the claim is denied by Medicare for a patient-specific reason, the claim is appealable through the Medicare appeal process. The Medicare decision will be final if the claim is denied by Medicare. The claimed services or supplies will not be considered for CHAMPUS payment and there is no CHAMPUS appeal of the CHAMPUS decision denying the claim.

(2) If Medicare processes a claim for a healthcare service or supply that is a

Medicare benefit and the claim is paid, either on initial submission or as a result of a Medicare appeal decision, the claim will be submitted to CHAMPUS for processing as a second payer to Medicare. If CHAMPUS denies payment of the claim, the Medicare-eligible beneficiary or their provider have the same appeal rights as other CHAMPUS beneficiaries and their providers under this section.

(3) If Medicare processes a claim and the claim is denied by Medicare because it is not a healthcare service or supply that is a benefit under Medicare, the claim is submitted to CHAMPUS. CHAMPUS will process the claim under this Part 199 as primary payer (or as secondary payer if another double coverage plan exists). If any part of the claim is denied, the Medicare-eligible beneficiary and their provider will have the same appeal rights as other CHAMPUS beneficiaries and their providers under this section.

* * * * *

■ 6. Section 199.15 is amended by revising paragraph (a)(6) to read as follows:

§ 199.15. Quality and Utilization Review Peer Review Organization Program.

(a) * * *

(6) *Medicare rules used as model.* The CHAMPUS Quality and Utilization Review Peer Review Organization program, based on specific statutory authority, follows many of the quality and utilization review requirements and procedures in effect for the Medicare Peer Review Organization program, subject to adaptations appropriate for the CHAMPUS program. In recognition of the similarity of purpose and design between the Medicare and CHAMPUS PRO programs, and to avoid unnecessary duplication of effort, the CHAMPUS Quality and Utilization Review Peer Review Organization program will have special procedures applicable to supplies and services furnished to Medicare-eligible CHAMPUS beneficiaries. These procedures will enable CHAMPUS normally to rely upon Medicare determinations of medical necessity and appropriateness in the processing of CHAMPUS claims as a second payer to Medicare. As a general rule, only in cases involving Medicare-eligible CHAMPUS beneficiaries where Medicare payment for services and supplies is denied for reasons other than medical necessity and appropriateness will the CHAMPUS claim be subject to review for quality of care and appropriate utilization under the CHAMPUS PRO program. TRICARE will continue to perform a medical necessity and appropriateness review for quality of care and appropriate utilization under the CHAMPUS PRO program where required by statute, such as inpatient mental health services in excess of 30 days in any year.

* * * * *

■ 7. Section 199.17 is amended by revising paragraphs (a) introductory text, (a)(6) introductory text, (a)(6)(i), (a)(6)(ii), (b) introductory text, (b)(1), (c) introductory text, (c)(3), (c)(4), (m)(1)(ii) introductory text, (m)(2)(ii), (m)(3)(ii), and (v) to read as follows:

§ 199.17 TRICARE program.

(a) *Establishment.* The TRICARE program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the Military Health System.

* * * * *

(6) Major features of the TRICARE program. The major features of the TRICARE program, described in this section, include the following:

(i) Comprehensive enrollment system. Under the TRICARE program, all health care beneficiaries become classified into one of four categories:

(A) Active duty members, all of whom are automatically enrolled in TRICARE Prime;

(B) TRICARE Prime enrollees;

(C) TRICARE Standard participants, who are all CHAMPUS eligible beneficiaries who are not enrolled in TRICARE Prime;

(D) Non-CHAMPUS beneficiaries, who are beneficiaries eligible for health care services in military treatment facilities, but not eligible for CHAMPUS;

(ii) Establishment of a triple option benefit. A second major feature of TRICARE is the establishment of three options for receiving health care:

(A) ''TRICARE Prime,'' which is a health maintenance organization (HMO)-like program. It generally features use of military treatment facilities and substantially reduced out-of-pocket costs for CHAMPUS care. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks and to follow certain managed care rules and procedures.

(B) ''TRICARE Extra,'' which is a preferred provider organization (PPO) program. It allows TRICARE Standard beneficiaries to use the TRICARE provider network, including both military facilities and the civilian network, with reduced out-of-pocket costs. These beneficiaries also continue to be eligible for military medical treatment facility care on a space-available basis.

(C) ''TRICARE Standard'' which is the basic CHAMPUS program. All eligible beneficiaries are automatically included in Standard unless they have enrolled in Prime. It preserves broad freedom of choice of civilian providers, but does not offer reduced out-of-pocket costs. These beneficiaries continue to be eligible to receive care in military medical treatment facilities on a space available basis.

* * * * *

(b) *Triple option benefit in general.* Where the TRICARE program is fully implemented, eligible beneficiaries are given the option of enrolling in TRICARE Prime (also referred to as ''Prime'') or remaining in TRICARE Standard (also referred to as ''Standard''). In the absence of an enrollment in Prime, coverage under Standard is automatic.

(1) *Choice voluntary.* With the exception of active duty members, the choice of whether to enroll in Prime is voluntary for all eligible beneficiaries. For dependents who are minors, the choice will be exercised by a parent or guardian.

* * * * *

(c) *Eligibility for enrollment.* Where the TRICARE program is fully implemented, all CHAMPUS-eligible beneficiaries who are not Medicare eligible on the basis of age are eligible to enroll in Prime or to remain covered under Standard. CHAMPUS beneficiaries who are eligible for Medicare on basis of age (and are enrolled in Medicare Part B) are automatically covered under TRICARE Standard. Further, some rules and procedures are different for dependents of active duty members and retirees, dependents, and survivors. In addition, where the TRICARE program is implemented, a military medical treatment facility commander or other authorized individual may establish priorities, consistent with paragraph (c) of this section, based on availability or other operational requirements, for when and whether to offer enrollment in Prime.

* * * * *

(3) Retired members, dependents of retired members, and survivors.

(i) Where TRICARE is fully implemented, all CHAMPUS-eligible retired members, dependents of retired members, and survivors who are not eligible for Medicare on the basis of age are eligible to enroll in Prime. After all active duty members are enrolled and availability of enrollment is assured for all active duty dependents wishing to

enroll, this category of beneficiaries will have third priority for enrollment.

(ii) If all eligible retired members, dependents of retired members, and survivors within the area concerned cannot be accepted for enrollment in Prime at the same time, the MTF Commander (or other authorized individual) may allow enrollment within this beneficiary group category on a first come, first served basis.

(4) *Coverage under Standard.* All CHAMPUS-eligible beneficiaries who do not enroll in Prime will remain in Standard.

* * * * *

(m) * * *

(1) * * *

(ii) For Standard participants, TRICARE Extra cost sharing applies. The deductible is the same as standard CHAMPUS. Cost shares are as follows:

* * * * *

(m) * * *

(2) * * *

(ii) For Standard participants, cost sharing is as specified for the basic CHAMPUS program.

* * * * *

(m) * * *

(3) * * *

(ii) For Standard participants, cost sharing is as provided in military treatment facilities.

* * * * *

(v) *Administrative procedures.* The Assistant Secretary of Defense (Health Affairs), the Director, TRICARE Management Activity, and MTF Commanders (or other authorized officials) are authorized to establish administrative requirements and procedures, consistent with this section, this part, and other applicable DoD Directives or Instructions, for the implementation and operation of the TRICARE program.

Dated: May 22, 2003.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–13397 Filed 5–29–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–060]

RIN 1625–AA00

Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, and the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River. This action is necessary to safeguard Naval and Coast Guard vessels, critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: This rule is effective from 4 p.m., May 20, 2003, until 8 p.m. May, 28, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–060) and are available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–060), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The Captain of the Port conducts an ongoing assessment of the maritime domain security needs within the port and has determined that the temporary safety and security zones established by this rule are necessary to provide for the protection of Naval and Coast Guard vessels, critical port infrastructure and coastal facilities. This determination was reached after due consideration of various warnings publicly disseminated by the Federal Bureau of Investigation and other law enforcement agencies, and threatening statements attributed to the al Qaeda organization. In view of the urgent need to adequately safeguard Naval and Coast Guard vessels, critical coastal facilities and infrastructure from potential terrorist attack, any delay encountered by normal notice and comment rulemaking procedures would be contrary to the public interest.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Background and Purpose

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of*

August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States, 67 FR 56215 (September 3, 2002).

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions within Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Coast Guard is establishing temporary security zones around the Stapleton Homeport Pier in Upper New York Bay, the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River. These security zones are necessary to provide for the security of the port and to ensure that vessels and facilities, are not used as targets of, or platforms for, terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Temporary Rule

This rule establishes the following temporary security zones:

Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY

The Coast Guard is establishing a temporary security zone in all waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier bound by the following approximate positions: 40°38′00.6″ N, 074°04′22.3″ W, thence to 40°37′51.1″ N, 074°03′46.5″ W, thence to 40°37′27.5″ N, 074°03′54.5″ W, thence to 40°37′33.7″ N, 074°04′20.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY

The Coast Guard is establishing temporary security zones in all waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45′51.3″ N, 074°00′30.2″ W, thence to 40°46′27.7″ N, 074°00′04.9″ W, thence to the southeast corner of Pier 97 where it intersects the seawall.

The zones described above are necessary to protect the Naval and Coast Guard vessels participating in Fleet Week 2003, the Stapleton Homeport Pier, the New York City Passenger Ship Terminal; the Intrepid Museum, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the vessels and piers that could potentially cause serious negative impact to vessels, the port, or the environment and result in numerous casualties. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels will still be able to transit around the security zones at all times. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Any violation of any security zone herein is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. This finding is based on the fact that: the zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

Collection of Information

This temporary rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes security zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 4 p.m. May 20, 2003, to 8 p.m. May 28, 2003, add temporary § 165.T01–060 to read as follows:

§ 165.T01–060 Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Security zones.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are security zones:

(1) Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY. (i) Location: All waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier bound by the following approximate positions: 40°38′00.6″ N, 074°04′22.3″ W, thence to 40°37′51.1″ N, 074°03′46.5″ W, thence to 40°37′27.5″ N, 074°03′54.5″ W, thence to 40°37′33.7″ N, 074°04′20.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Enforcement period.* Paragraph (a)(1)(i) will be enforced from 4 p.m. on Tuesday, May 20, 2003 to 8 p.m. on Wednesday, May 28, 2003.

(2) *New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY.* (i) *Location:* All waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: from the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45′51.3″ N, 074°00′30.2″ W, thence to 40°46′27.7″ N, 074°00′04.9″ W, thence to the southeast corner of Pier 97 where it intersects the seawall.

(ii) *Enforcement period.* Paragraph (a)(2)(i) will be enforced from 4 p.m. on Tuesday, May 20, 2003 to 8 p.m. on Wednesday, May 28, 2003.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 20, 2003.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 03–13486 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zones: Annual Fireworks Events in the Captain of Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety zones on the waters located in their AOR during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these fireworks displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective June 30, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD13–03–008) and are available for inspection or copying at U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, Operations Department, (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 27, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones: Annual fireworks events in the Captain of the Port Portland Zone in the **Federal Register** (68 FR 14933). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing permanent safety zones to allow for safe fireworks displays. These events may result in a number of vessels congregating near fireworks launching barges. Safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays.

Discussion of Comments and Changes

No comments were received from the public regarding this proposed rule.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the designated areas at the corresponding times as drafted in this rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for particular dates, all in the evening when vessel traffic is low. Traffic will be allowed to pass through the zones with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605–(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Request for comments and assistance was published in the notice of proposed rulemaking for this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A Categorical Exclusion is provided for regulations establishing safety zones. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.1315 is added to read as follows:

§ 165.1315 Safety Zones: Annual fireworks events in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Cinco de Mayo Fireworks Display, Portland, OR:*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Enforcement period.* One day in early May.

(2) *Portland Rose Festival Fireworks Display, Portland, OR:*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Enforcement period.* One day in late May or early June.

(3) *Tri-City Chamber of Commerce Fireworks Display, Columbia Park, Kennewick, WA:*

(i) *Location.* Waters on the Columbia River bounded by shoreline to the north and south, Interstate 395 bridge to the east, and 1000 feet of water to the west of the launching barge which is centered at 46 degrees 13 minutes 38 seconds North, 119 degrees 08 minutes 52 seconds West.

(ii) *Enforcement date.* Every July 4th.

(4) *Cedco Inc. Fireworks Display, North Bend, OR*

(i) *Location.* Waters on the Coos River bounded by shoreline to the east and west and 1000 feet of water to the north and south of the launching barge which is centered at 43 degrees 23 minutes 45 seconds North, 124 degrees 12 minutes 50 seconds West.

(ii) *Enforcement period.* One day in early July.

(5) *Astoria 4th of July Fireworks, Astoria, OR*

(i) *Location.* All waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123 degrees 50 minutes 1 second West to 46 degrees 11 minutes 50 seconds North, thence east to 123 degrees 49 minutes 15 seconds West, thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin.

(ii) *Enforcement period.* One day in early July.

(6) *Oregon Food Bank Blues Festival Fireworks, Portland, OR*

(i) *Location.* Waters on the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Enforcement period.* One day in early July.

(7) *Oregon Symphony Concert Fireworks Display, Portland, OR*

(i) *Location.* All waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Enforcement period.* One day in late August.

(8) *Fort Vancouver Celebrate America Fireworks Display, Vancouver, WA*

(i) *Location.* All waters of the Columbia River bounded by 1000 feet of water to the north, shoreline to the south, Interstate Five Bridge to the west and 1000 feet of water to the east of the fireworks launching barge which is centered at 45 degrees 36 minutes 50 seconds North, 122 degrees 40 minutes 22 seconds West.

(ii) *Enforcement period.* One day in late October.

(b) *Regulations.*

(1) In accordance with § 165.23, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.23 also contains other general requirements. Announcement of enforcement periods may be made by the methods described in 33 CFR 165.7, or any other reasonable method.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: May 13, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–13487 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–002]

RIN 1625–AA00

Security Zones; San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period of moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are moored in, anchored in or depart from the San Francisco Bay and Delta ports, California. These security zones are

needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: The amendment to § 165.T11–077(f) in this rule is effective May 30, 2003. Section 165.T11–077, added at 68 FR 9003, February 27, 2003, effective from 11:59 p.m. PST on February 10, 2003, to 11:59 p.m. PDT on May 31, 2003, as amended in this rule, is extended in effect to 11:59 p.m. PDT on September 30, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–002] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, Waterways Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2003, we published a temporary final rule (TFR) for High Interest Vessels (HIVs) in San Francisco Bay and Delta ports entitled ''Security Zones; San Francisco Bay, CA'' in the **Federal Register** (68 FR 9003) under § 165.T11–077. It has been in effect since February 10, 2003 and is set to expire 11:59 p.m. PDT on May 31, 2003.

We did not publish a notice of proposed rulemaking (NPRM) this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In addition, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**, for the following reasons. The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, a heightened level of security has been established around all HIVs in San Francisco Bay and Delta ports. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to HIVs. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

The original temporary final rule was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the San Francisco and Delta ports. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined that the need for continued security regulations exists.

We plan to publish a notice of proposed rulemaking (NPRM) for a permanent HIV security zone. In this NPRM, we will propose to amend 33 CFR 165.1183, which was added by the Final rule [COTP San Francisco Bay 02–019] published in the **Federal Register** (67 FR 79854) on December 31, 2002. 33 CFR § 165.1183, ''Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California'', establishes security zones around cruise ships and tank vessels, but does not address HIVs. The forthcoming NPRM will clarify the classes of vessels sought to be encompassed in the section and will allow for a public comment period and for a final rule to be put into effect without an interruption in the protection provided by this temporary rule establishing HIV security zones. Section 165.1183 will remain in effect until amended by a future rule.

The measures contemplated by this extension to the original temporary final rule are intended to facilitate ongoing response efforts and prevent future terrorist attack. The Coast Guard will utilize the extended effective period created by this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay. Therefore, the public will still have the opportunity to comment on this rule. This revision preserves the status quo within the Ports while permanent regulations are developed.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent to U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against an HIV would have on the public interest, the Coast Guard is extending the effective period of security zones around and under HIVs entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against HIVs. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board, and surrounding area and communities, security zones are prudent for these types of vessels.

As of today, the need for security zones around HIVs still exists. This temporary final rule will extend the

effective period of security zones that were set to expire May 31, 2003, for 4 months—from May 31, 2003, to September 30, 2003. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by HIV security zones.

Discussion of Rule

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02–019] adding § 165.1183, ''Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California'' in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels. A forthcoming NPRM, under docket COTP San Francisco Bay 03–003 will propose to amend section 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels. The Coast Guard will utilize the extended effective period of the HIV security zones to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay.

In this regulation, the Coast Guard is extending the effective period of the current security zones around all HIVs that are anchored, moored or underway within the San Francisco Bay and Delta ports. A security zone is automatically activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8; LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W & 37°46.5′ N, 122°35.2′ W, respectively and remains in effect while the vessel is underway, anchored or moored within the San Francisco Bay and Delta ports. When activated, this security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8; LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W & 37°46.5′ N, 122°35.2′ W, respectively on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The sizes of the zones are the minimum necessary to provide adequate protection for HIVs, their crews and passengers, other vessels operating in the vicinity of HIVs, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking an HIV in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during HIV transits, which will last for approximately 30 minutes.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a HIV is at anchor, vessel traffic will have ample room to maneuver around the security zones. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Revise temporary § 165.T11–077(f), to read as follows:

§ 165.T11–077 Security Zones; High Interest Vessels, San Francisco Bay and Delta ports, California.

* * * * *

(f) *Effective Dates.* This section is effective at 11:59 p.m. PST on February 10, 2003, and will terminate at 11:59 p.m. PDT on September 30, 2003.

Dated: May 19, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–13696 Filed 5–28–03; 1:57 pm]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD02

Assateague Island National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Assateague Island National Seashore, Maryland and Virginia. This rule is necessary because regulations require any park allowing the use of PWC to promulgate a special regulation authorizing the use. The decision to allow use of PWC must consider whether PWC use is appropriate for a specific park area based on that area's enabling legislation, resources, values, other visitor uses, and overall management objectives. The NPS published a proposed rule in the **Federal Register** on May 6, 2002. The public was invited to comment on the rulemaking for 60 days.

EFFECTIVE DATE: This rule becomes effective June 30, 2003.

ADDRESSES: Mail inquires to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. e-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS ''Organic Act'', to regulate

the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *''

16 U.S.C. 1a–1 states, ''The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *''

As with the United States Coast Guard, NPS regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U. S. Constitution. In regards to the NPS, Congress in 1976 directed the NPS to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *'' (16 U.S.C. 1a–2(h)). In 1996 the NPS clarified its authority to regulate activities within the park boundaries occurring on waters subject to the jurisdiction of the United States by adopting 36 CFR 1.2(a)(3).

Personal Watercraft Use in the National Seashore

PWC use at Assateague Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales during the 1980s and 1990s. During that period, the preponderance of PWC use within the National Seashore occurred in the ocean and bay waters surrounding the northernmost 6 miles of Assateague Island. This area is immediately adjacent to the town of Ocean City which, with its summertime population of 300,000 and numerous marinas and boat launching facilities, generates significant amounts of water-based recreation, including boating and PWC use.

On April 20, 2000, the National Park Service adopted a final rule (36 CFR 3.24) for managing PWC use in areas of the National Park System. The regulation was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-based activity was appropriate for a specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to 2000, PWC use was allowed throughout Assateague Island National Seashore, although as previously noted, the vast majority occurred adjacent to the northern end of the Island. In May 2000, most of the waters within the National Seashore were closed to PWC use consistent with 36 CFR 3.24 and a local determination by the superintendent that their continued use threatened the resources and values for which the park was established to protect. The authority for this closure was based upon 36 CFR Section 1.5, Closure and Public Use Limits. As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate.

The process used to identify appropriate PWC use at Assateague Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. This rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The Master Plan for Chincoteague National Wildlife Refuge (CNWR) (approved December 27, 1993) in the section entitled ''Public Use Management—Access'' states that ''From September 1 through March 14, allow boating access to Fishing Point, Toms Cove and year round at Assateague Point Beach.'' The Master Plan does not distinguish between boats and PWC in regards to access in the Assateague Point area of the CNWR. The Assateague Point Beach is the only area of the entire southern end of Assateague Island that is open to boat-in access during the summer months. The Seashore has identified the adjacent waters as open to PWC use in paragraph (c)(ii) of this regulation. CNWR and the Seashore work cooperatively to assure that unit specific regulations are as compatible as can be, given the somewhat different missions of the two agencies. Prohibiting PWC use in this area would substantially deprive PWC operators of any beach access within reasonable operating range for PWC from the town of Chincoteague and would conflict with the Refuge's allowance of PWC access at CNWR. Additionally, this would have a negative impact on the tourism-based economy the town of Chincoteague depends on.

The use of motor vessels is a traditional method of accessing Assateague Island for land-based recreational activities. As such, providing PWC owners with this opportunity is considered both desirable and compatible with park purposes. To identify areas of potential use, the effects of PWC were evaluated against a number of resource and public use issues. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. Under this rule, PWC use will be allowed only in the Ocean City Inlet and Horse Marsh areas primarily for the purpose of providing a transportation corridor to Assateague Island. Both areas have physical and biological characteristics that minimize the potential for adverse impacts to park resources and values, and both are located immediately adjacent to population centers and experience high levels of general boat traffic. The effect will be to provide island access for persons wanting to use PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Assateague Island.

Summary of Comments

The NPS published a proposed rule in the **Federal Register** on May 6, 2002 (67 FR 30339). The public was invited to comment on the rulemaking for 60 days. We received approximately 7,600 comments in the form of letters, faxes, emails and postcards on the rulemaking and supporting environmental assessment. Of the comments received, 7,264 support a complete ban on PWC use within the national seashore boundary. An additional 43 individuals support banning PWC use within the entire National Park System. Approximately 170 comments supported the proposed rule.

Comments that referred to the environmental assessment have been identified and responded to in the Finding of No Significant Impact. The following is a summary of the comments specific to the rulemaking and the responses by the NPS.

Comment 1: Personal Watercraft Industry Association (PWIA) would like to see a designated area along the ocean side of the island where PWC could come ashore, possibly south of where most beach-going visitors congregate.

Response: Ocean front use and beach access by personal watercraft was considered and rejected by the park. Concerns associated with such use/access included those related to visitor

conflicts, safety, noise, and wildlife disturbance.

Comment 2: The park service can set aside a one or two mile stretch of beach, (the larger the stretch the more spread out the users will be, thereby enhancing safety), and designate it a PWC use area. This portion should be in the ORV zone where fishermen do not frequent.

Response: The Park Service is not considering access to the island by PWC via the ocean front for several reasons. Although ORV use does occur along the beach, use of PWC along that same stretch of ocean conflict with other uses in that area such as surf fishermen, sea kayakers, and surfers. These users are in that area in order to avoid conflicts with swimmers using beaches in other areas. Additionally, in order to launch from the ORV use area on the ocean front, it would be necessary to bring trailers out onto the beach and that is prohibited. Without launch capabilities, PWC would be forced to travel great distances along the coast in order to use that area, possibly causing a fuel shortage problem for the PWC. All of these issues and concerns lead the NPS to conclude that PWC use in the proposed area cannot be accommodated.

Comment 3: There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect.

Response: In April of 2000, a service-wide rule became effective that defined a PWC and established the requirements for PWC use in the National Park System. That rule is located at Title 36 Code of Federal Regulations, Section 3.24. In April 2002, the authority for PWC to operate within Assateague Island National Seashore expired and PWC have been prohibited within the Seashore's boundaries pending the promulgation of this final rule. When this rule becomes effective, it establishes areas where PWC may operate within the boundaries of the Seashore and under what conditions. As codified, 36 CFR 3.24 establishes what areas of the Seashore are closed to PWC use and what craft meet the definition of a PWC. The regulations contained in 36 CFR 3.24 continue to apply to the areas where PWC use is prohibited within the Seashore and are enforceable by all commissioned rangers within the NPS.

Comment 4: The Town [of Chincoteague] feels that the distance from the shoreline in the Assateague Channel adjacent to Chincoteague should be decreased to as little as 25′ to accommodate a rather narrow navigable area. To compress the area available to personal watercraft only creates a safety hazard by overcrowding the area that would be available in this narrow waterway.

Response: The NPS is authorizing PWC use to occur in the water area along the western shore of Assateague Island near Horse Marsh. The use area will increase the total available area for PWC to operate within the bay and will not compress the navigable use area. This should help to alleviate any safety concerns related to PWC and other craft attempting to operate in the Assateague Channel, a narrow waterway.

Comment 5: The U.S. Coast Guard expressed concern if the PWC use area described in Sinepuxent Bay in Alternative A is prohibited in Alternative B then Alternative B leaves only the inlet area for use. That could send the wrong signal and push a lot of folks into a very tight area where the currents max out, large vessels transit and over the next couple of years there will be a large scale Army Corps of Engineers project.

Response: Following their initial comments, the U.S. Coast Guard met with park staff to discuss the proposed action. The U.S. Coast Guard Command then retracted their original statement.

The Coast Guard's initial concern was the ramification of a closed area in Sinepuxent Bay and how this would potentially increase traffic in Ocean City Inlet. The NPS reported that they had previously engaged the local PWC rental companies, discussed the proposed closure area and the impact this would have on their operation. The area in question is just west of Assateague and north of the 611 bridge. In alternative A, this area is indicated by the ''PWC use area'' markings. The PWC rental companies stated that this would not impact their operation, because the area in question is very shallow and would likely cause damage to their craft. Their renters are directed to stay in the deeper water to the west outside of the park boundaries. Therefore, the Coast Guard does not have a problem with the ban in that region, as it would negligibly impact inlet congestion.

Comment 6: Some provision for non-official emergency personnel rescue use should be allowed in Sinepuxent Bay, such as towing a drifting kayaker, windsurfer, swimmer, etc. There are no enforcement powers established in the rule for personal watercraft violations. Until enforcement powers are established in the rule, the rule should not go into effect. The EA does not take into account the considerable law enforcement burden caused by PWC users.

Water-based boundaries are difficult to define and enforce. A complete ban on PWC landings on Assateague Island National Seashore beaches and Chincoteague National Wildlife Refuge beaches and in these areas' respective waters would likely lead to less confusion and fewer enforcement actions. Once a community of PWC users understands that there is a complete prohibition on operating PWC in park and refuge waters, the demands on NPS enforcement personnel would be minimized.

Response: All mariners, regardless of type of vessel used, are obligated to render assistance to those in distress on the sea precluding the need for verbiage in the rule allowing such actions. The rule permits personal watercraft to beach on the ocean side of the island in case of injury or mechanical failure. The final rule will be enforceable pursuant to the authority provided in Title 36 Code of Federal Regulations, Sections 3.24 and 7.65. The limited amount of park water legally accessible by personal watercraft will make enforcement relatively easy.

Comment 7: The Town questions the right of the United States National Park Service or the United States Fish and Wildlife Service to regulate waters for which jurisdiction was granted to the Town by the Virginia General Assembly. The Town Charter as granted by the State gives jurisdictional authority over the surrounding waters of Chincoteague to the mean low water level of the Assateague shoreline.

Response: Congress in 16 U.S.C. 1a–2(h) has directed the NPS to regulate the waters within areas of the National Park System. The particular waters at issue are navigable waters which are clearly subject to the jurisdiction of the United States.

Public Law 89–195 September 21, 1965 authorized the establishment of Assateague Island National Seashore ''together with the adjacent water areas not more than one-half mile beyond the mean high waterline.'' Sec. 4 of that law required the Secretary of the Interior to publish the location of the seashore in the **Federal Register**. This was published in FR Vol. 50 No. 159 August 16, 1985.

Together with the authority the Commonwealth of Virginia may have granted to the Town of Chincoteague, the National Park Service has the authority to regulate activities in the waters surrounding Assateague Island. However, under the Supremacy Clause of the U.S. Constitution, federal law and regulations may supercede state and local laws when necessary to protect the federal interest. In this rule, the NPS has

determined it is necessary to regulate the use of PWC in order to protect the resources of Assateague Island National Seashore and is consistent with the statutory direction to regulate boating and related activities.

Comment 8: One organization commented that the PWC industry has claimed that PWC are recognized by the U.S. Coast Guard (USCG) as ''Class A'' vessels and therefore cannot be regulated differently than other motorboats. However, the USCG states that the term ''class A vessel'' has no meaning insofar as USCG regulations are concerned. To date, the USCG has refrained from defining PWC and encourages other government agencies to define the craft. The NPS determined that PWC are different from conventional motorboats and finalized PWC-specific regulations in March of 2000.

Response: The NPS definition of PWC is as follows: Personal watercraft refers to a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull.

The NPS agrees that PWC have sufficient individual characteristics to warrant regulations specific to this type of craft. With this in mind, the NPS evaluated and chose the best regulatory approach in the preferred alternative in order to maintain the opportunities for various types of recreation while protecting the resources of Assateague Island National Seashore.

Changes to the Final Rule

Based on the preceding comments and responses, the NPS does not intend to make any changes to the provisions of this rule with regard to PWC operations.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

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

The National Park Service has completed the report ''Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore'' (Law Engineering and Environmental Sciences, Inc.) dated March 2002. The report found that this proposed rule would not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality. The economic analysis estimates that PWC users and related businesses to experience a net present value of $475,000–$506,600 in benefits over the next ten years as a result of implementing the preferred alternative. True social benefits are expected to be somewhat lower, since this estimate does not include increased park enforcement costs or potential adverse effects to non-PWC users due to lack of data.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel policy issues. The proposed regulation was the first special regulation for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. This regulation, and other PWC rules have generated considerable public interest because of potential environmental and economic impacts from these rules.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, ''Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore'' (Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that small businesses would experience a small economic gain as a result of implementing the preferred alternative.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule only effects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). Additionally, a Finding of No Significant Impact was completed and signed on January 30, 2003. A copy of that finding may be obtained by contacting the Superintendent of Assateague Island National Seashore.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedures Act

This final rule will be effective upon publication in the **Federal Register**. In accordance with the Administrative Procedures Act, specifically, 5 U.S.C. 553(d)(1), this rule (36 CFR 7.48 (g)) is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in the preamble of this rule, the final rule is a Part 7 special regulation for Assateague Island National Seashore that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of personal watercraft in units of the national park system unless an individual park area has designated the use of personal watercraft by adopting a Part 7 special regulation. The proposed rule was published in the **Federal Register** (67 FR 30339) on May 6, 2002, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedures Act, pursuant to the exception in (d)(1), waives the section 553(d) 30-day waiting period when the published rule ''grants or recognizes an exemption or relieves a restriction.'' In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period does not apply to the Assateague Island National Seashore final rule.

The Attorney General's Manual on the Administrative Procedures Act explained that the ''reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one 'granting or recognizing exemption or relieving restriction', there by exempting it from the thirty-day requirement.'' This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. *See also*, *Independent U.S. Tanker Owners Committee* v. *Skinner,* 884 F.2d 587(D.C.Cir. 1989). In this case, the court found that (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. ''In sum, the good cause exception must be invoked and justified; the (d)(1) exception applies automatically.'' at 591. The facts are that Assateague Island National Seashore is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the (d)(1) exception applies to this rule.

In accordance with the Administrative Procedures Act, this rule is also excepted from the 30-day waiting period by 5 U.S.C. 553 (d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. ''The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was 'to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.' S.Rep. No. 752, 79th Cong., 1st Sess.15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946).'' *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

The rule has been developed in full compliance with section 553(b) and (c) rulemaking requirements. The proposed rule was published in the **Federal Register** and provided 60 days for public comments. The public comments received are summarized and analyzed in this rule. ''In determining whether to invoke the exception, the agency is 'required to balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of its ruling.' *The Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 752 (10th Cir. 1987). Since the primary purpose of the 30-day waiting period is so the public can prepare for the changes caused by the new rule, this rule authorizes the continued use of PWCs at Assateague Island National Seashore and will not require any changes that will require a 30-day waiting period for the public to prepare itself. There is no need to utilize the 30-day waiting period for the benefit of the affected parties, instead there is good cause for making this rule effective upon publication so that affected parties can begin using PWCs again.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service is amending 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Section 7.65 is amended by adding paragraph (c) to read as follows:

§ 7.65 Assateague Island National Seashore

* * * * *

(c) *Personal Watercraft.* (1) Personal Watercraft (PWC) are allowed in Assateague Island National Seashore within the following locations and under the following conditions:

(i) *Ocean City Inlet:* PWC may operate, transit, launch in water or beach on land between the north shore of Assateague Island and the south margin of the established Ocean City

Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay:* PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside:* PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: May 27, 2003.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 03–13578 Filed 5–29–03; 8:45 am]

BILLING CODE 4312–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651–AB37

Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Since continued prosecution application (CPA) practice is largely redundant in view of RCE practice, the Office is eliminating CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application. Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, by telephone at (703) 306–5586, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9404, marked to the attention of Eugenia A. Jones.

SUPPLEMENTARY INFORMATION: The AIPA was enacted into law on November 29, 1999. *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). Among other things, the AIPA amended title 35 of the United States Code to provide for a request for continued examination (RCE) practice. *See* 35 U.S.C. 132(b). RCE practice is applicable to any utility or plant application filed on or after June 8, 1995. *See* 113 Stat. at 1501A–560 through 1501A–561. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the RCE provisions of the AIPA by an interim rule published in March of 2000 and a final rule published in August of 2000. *See Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (Apr. 11, 2000) (interim rule), and *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50091 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13 (Sept. 5, 2000) (final rule).

The AIPA also amended title 35 of the United States Code to provide, with certain exceptions, for the publication of pending patent applications (other than design applications) eighteen months after the earliest claimed filing date. *See* 35 U.S.C. 122(b). The eighteen-month publication provisions of the AIPA apply to utility and plant applications filed on or after November 29, 2000, including any CPA filed on or after November 29, 2000. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the eighteen-month publication provisions of the AIPA by a final rule published in September of 2000. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule). That notice indicated that the Office must create a patent application publication of a CPA using the copy of the prior application that is contained in the Office's Patent Application Capture and Review (PACR) system database or microfilm records. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). The PACR system database or microfilm records for applications filed before November 29, 2000, however, are often inadequate for eighteen-month publication purposes. For example, the copy of the specification or drawings contained in the Office's PACR system database or microfilm records for applications filed before November 29, 2000, is often of too poor a quality for use in the eighteen-month publication process. Since the eighteen-month publication of a CPA often requires special handling, the Office has been obliged to create a special eighteen-month publication process for CPAs, which makes the eighteen-month publication of CPAs both costly and inefficient.

The Office revised the rules of practice in December of 1997 to permit applicants to effectively obtain continued examination of an application using a streamlined continuing application practice (*i.e.*, CPA practice). *See* 37 CFR 1.53(d). CPA practice was a regulatory substitute for statutory authority to provide continued examination of an application for a fee. *See Changes to Patent Practice and Procedures*, 62 FR 53131, 53142 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 72 (Oct. 21, 1997) (final rule) (comment 17 and response). As a convenience to applicants, the Office did not eliminate CPA practice as to utility and plant applications when RCE practice was implemented. The Office, however, did make CPA practice a transitional practice as to utility and plant applications, by requiring that the prior application have been filed before May 29, 2000. *See Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR at 50100, 1238 *Off. Gaz. Pat. Office* at 20. This change to CPA practice was designed to cause CPA filings to phase out over time in utility or plant applications. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). Thus, CPA practice was retained only as a temporary transitional practice as to utility and plant applications after RCE practice was implemented.

CPA filings are in the process of being phased out, but the phasing out of CPA filings is resulting in an ever increasing percentage of requests for a CPA being improper because the prior application was not filed before May 29, 2000. Continuing to permit the filing of a CPA in utility or plant applications (filed before May 29, 2000) requires the Office to: (1) check every request for a CPA to determine whether it is a proper CPA; and (2) maintain a special eighteen-

month publication process for an ever decreasing number of CPAs. Since CPA practice for utility or plant applications is largely redundant in view of RCE practice and is also costly and inefficient, the Office has determined that it is now appropriate to eliminate CPA practice as to utility and plant applications.

Discussion of Specific Rule

Title 37 of the Code of Federal Regulations, part 1, is amended as follows:

Section 1.53(d)(1) is amended to provide that an application may be filed as a CPA under § 1.53(d) only if the application is for a design patent (either an original or reissue design patent) and the prior nonprovisional application (of which the CPA is a continuation or divisional) is a design application that is complete as defined by § 1.51(b).

Section 1.53(d)(3) is amended to provide that the filing fee for a CPA filed under § 1.53(d) is the basic filing fee as set forth in § 1.16(f). Since § 1.53(d) no longer applies to utility or plant applications and a design application may contain only a single claim (§ 1.154(b)(6)), there is no need for § 1.53(d)(3) to provide for additional claims fees.

Section 1.53(e)(1) is amended to provide that if a request for an application under § 1.53(d) (a CPA) does not meet the requirements of § 1.53(d) because the application in which the request was filed is not a design application, and if the application in which the request was filed was itself filed on or after June 8, 1995, the request for an application under § 1.53(d) will be treated as an RCE under § 1.114. This change to § 1.53(e)(1) incorporates into the rules of practice the Office's current procedures for handling improper CPAs.

Experience has shown that such requests for a CPA may not satisfy the requirements of § 1.114 to be a proper RCE (*e.g.*, the request may lack a submission as defined by § 1.114(c), or may not be accompanied by the fee set forth in § 1.17(e)). In such situations, the Office will treat the improper request for a CPA as an RCE (albeit an improper RCE), and the time period set in the last Office action (or notice of allowance) will continue to run. If the time period (considering any available extension under § 1.136(a)) has expired, the applicant must file a petition under § 1.137 (with a submission as defined by § 1.114(c), unless previously filed, and/or fee set forth in § 1.17(e)) to revive the abandoned application.

During the implementation of RCE practice, the Office indicated that if an applicant files a request for a CPA of an application to which CPA practice no longer applies and the applicant does not want the CPA request to be treated as an RCE (*e.g.*, the CPA is a divisional CPA), the applicant may file a petition under § 1.53(e) requesting that the improper CPA be converted to an application under § 1.53(b). *See Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR at 50093–94, 1238 *Off. Gaz. Pat. Office* at 15. Since RCE practice has been in place for over three years and it is burdensome on the Office to treat petitions requesting conversion of a CPA into an application under § 1.53(b), the Office will no longer convert an improper CPA into an application under § 1.53(b) simply because it is requested by the applicant. Therefore, the Office will now convert an improper CPA into an application under § 1.53(b) only if the applicant shows that there are extenuating circumstances that warrant the burdensome process of converting a CPA into an application under § 1.53(b) (*e.g.*, restoring the application to pending status and correcting the improper RCE is not possible because the application has issued as a patent).

In the event that an applicant files a request for a CPA of a utility or plant application that was filed before June 8, 1995, the Office will treat the improper CPA request as an improper application under the provisions set forth in the first sentence of § 1.53(e)(1).

Response to comments: The Office published a notice proposing changes to the rules of practice to eliminate CPA practice as to utility and plant applications. *See Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, 66 FR 35763 (July 9, 2001), 1248 *Off. Gaz. Pat. Office* 167 (July 31, 2001) (proposed rule). The Office received nineteen written comments (from intellectual property organizations, patent practitioners, and the general public) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: One comment that supported the proposal to eliminate CPA practice (as to utility and plant applications) also suggested that RCE practice be extended to design applications so that the Office could also eliminate CPA practice as to design applications, thus completely eliminating CPA practice.

Response: Section 4404(b)(2) of the AIPA provides that the RCE provisions of 35 U.S.C. 132(b) do not apply to applications for a design patent. *See* 113 Stat. at 1501A–561. Therefore, the Office is prohibited by statute from making RCE practice applicable to design applications.

Comment 2: Several comments opposing the proposed elimination of CPA practice as to utility and plant applications argued that an RCE is not the equivalent of a CPA, and that the Office has acknowledged as much in its publications. The comments specifically indicate that an RCE is not equivalent to a CPA because: (1) One must file a CPA in an application filed before November 29, 1999, to take advantage of the common prior art exclusion in 35 U.S.C. 103(c) as amended by § 4807 of the AIPA; (2) one must file a CPA in an application filed before May 29, 2000, to take advantage of the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the AIPA; (3) one must file a CPA in an application filed before November 29, 2000, to take advantage of the eighteen-month publication provisions of the AIPA (without having to file a copy of the application by the Office's electronic filing system (EFS)); (4) one cannot file an RCE in an application filed before June 8, 1995; (5) one cannot file an RCE to obtain examination of a patentably distinct invention (*i.e.*, analogous to a divisional CPA); (6) one cannot file an RCE to change inventorship without a request to correct inventorship under § 1.48; (7) one cannot file an RCE without a submission; and (8) one cannot file an RCE before prosecution in the application is closed.

Response: The Office recognizes that an RCE is not a complete equivalent to a CPA. The Office has addressed the public's concerns regarding the elimination of CPA practice by delaying the elimination of CPA practice (which was initially proposed in July of 2001) until July of 2003, after more than three years have passed since the enactment of the AIPA. Since CPA practice has remained in effect for over three years since the enactment of the AIPA, any applicant wishing to file a CPA to take advantage of the amendment to 35 U.S.C. 103(c) in the AIPA, the patent term adjustment provisions of the AIPA, or the eighteen-month publication provision of the AIPA, has had sufficient time to do so. Any applicant now wishing to file a CPA to take advantage of any provision of the AIPA should file a CPA before July 14, 2003, the effective date of this change to § 1.53(d).

The RCE provisions of 35 U.S.C. 132(b) do not apply to applications filed before June 8, 1995. *See* 113 Stat. at 1501A–560 through 1501A–561. Based upon the current low usage of § 1.129(a) submission practice, it appears that there are relatively few applications

filed before June 8, 1995, that are still pending. In view of the patent term implications of abandoning an application filed before June 8, 1995, in favor of a continuing application, maintaining a streamlined practice (CPA practice) for filing a continuing application may result in applicants inadvertently taking this course of action to their detriment.

An applicant cannot obtain examination of a patentably distinct invention via an RCE (*i.e.*, as with a divisional CPA). The Office's experience with divisional CPA practice, however, has shown that divisional CPA practice is less than desirable. *See Request for Continued Examination Practice and Changes to Provisional Application Practice,* 65 FR at 50100, 1238 *Off. Gaz. Pat. Office* at 20 (response to comment 10). Therefore, the ''benefits'' of divisional CPA practice do not warrant continuing to maintain a burdensome CPA practice.

An applicant cannot file an RCE to change inventorship without a request to correct inventorship under § 1.48 (as can be done in a CPA). The requirements of § 1.48, however, have now been streamlined sufficiently that this benefit of CPA practice does not justify maintaining a burdensome CPA practice.

A continuing application (unlike an RCE) can be filed without a submission and before prosecution in the prior application is closed. These courses of action, however, tend to extend application pendency and thus tend to have an effect that is contrary to the Office's goal of reducing patent application pendency. Therefore, the Office will not maintain CPA practice to allow applicants to easily file a continuing application without a submission to advance prosecution or before prosecution in the prior application is closed.

Comment 3: One comment opposed the proposed change to CPA practice on the basis that it was unnecessary to abruptly end CPA practice as CPA practice is being phased out (as to utility and plant applications). Another comment suggested that the Office wait until all of the applications filed before May 29, 2000, are no longer pending before eliminating CPA practice.

Response: The phasing out of CPA practice has resulted in many requests for a CPA now being improper because they are filed in utility or plant applications that were filed on or after May 29, 2000. The Office considers it appropriate to now eliminate CPA practice outright such that the Office can treat any subsequently filed request for a CPA as an RCE rather than continue the burdensome process of separately tracking proper CPAs and improper CPAs.

Comment 4: One comment that opposed the proposed change to CPA practice suggested that abruptly eliminating CPA practice will likely result in an increase in CPA filings immediately before the effective date of the change.

Response: The Office anticipates that eliminating CPA practice as to utility and plant application effective July 14, 2003, may result in an increase in the number of CPA filings between now and July 14, 2003.

Comment 5: One comment that opposed the proposed change to CPA practice stated that eliminating CPA practice will likely result in an increase in the number of applications that are abandoned when a CPA (now treated as an RCE) is filed without a submission.

Response: As discussed above, the practice of filing continuing applications without any submission to advance prosecution tends to extend application pendency and thus tends to have an effect that is contrary to the Office's goal of reducing patent application pendency. If an improper CPA (the CPA being improper because CPA practice has been eliminated as to utility and plant applications) does not satisfy the requirements of § 1.114 to be treated as a proper RCE, the Office will treat the improper request for a CPA as an RCE (albeit an improper RCE). If the applicant does not supply a submission as defined by § 1.114(c) and/or fee set forth in § 1.17(e) within the time period for reply set in the Office action or notice of allowance (considering any available extension under § 1.136(a)), the applicant will need to file a petition under § 1.137 to revive the abandoned application and supply a submission as defined by § 1.114(c) and/or fee set forth in § 1.17(e), unless previously submitted.

Comment 6: One comment that opposed the proposed change to CPA practice stated that the increased cost of handling CPAs is offset by the publication fee. Another comment that opposed the proposed change to CPA practice stated that if CPAs are more costly to process, the Office should not eliminate CPAs but just charge additional fees for CPAs.

Response: The Office cannot simply offset the additional costs of publishing CPAs under eighteen-month publication with additional fees (the publication fee or a higher publication fee for CPAs). The Office cannot spend the fees it collects absent authority from Congress to do so. Congress generally does not authorize the Office to spend all of the fees it collects; rather, Congress generally authorizes the Office to spend up to only a certain amount of the fees it collects and diverts the remaining fees to other programs. Thus, even if the Office collects additional publication fees (ostensibly to recover the Office's cost of publishing CPAs), such fee revenue would likely be diverted from the Office leaving the Office with no funding to actually cover the increased cost of publishing CPAs.

Comment 7: One comment that opposed the proposed change to CPA practice suggested that the Office provide by rule that a CPA will not be published (under 35 U.S.C. 122(b) and § 1.211). Another comment suggested that the Office require applicant to file a nonpublication request under § 1.213(a) with any CPA, or require that any applicant filing a CPA without a nonpublication request under § 1.213(a) provide a copy of the application by the Office's electronic filing system (§ 1.215(c)).

Response: 35 U.S.C. 122(b)(2) does not provide an exception to eighteen-month publication for CPAs. The Office cannot simply require every applicant filing a request for a CPA to also file a nonpublication request under § 1.213(a) because not every applicant can properly make the certification required by 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a). In addition, the current CPA filing levels do not justify engaging in further refinements of CPA practice (as opposed to simply eliminating CPA practice as to utility and plant applications).

Comment 8: One comment stated that after a notice of appeal has been filed but an agreement with the examiner is reached, the applicant cannot file an RCE and that a CPA is the most efficient mechanism to effect the agreement.

Response: An applicant can file an RCE after a notice of appeal has been filed to effect any agreement with the examiner (or to obtain continued examination of the application before the examiner). *See* § 1.114(a). There is no reason why a CPA would be a more effective mechanism than an RCE to effect any such agreement.

Comment 9: One comment questioned whether the examination given to an application after the filing of an RCE is the same as for a CPA.

Response: The examination given to an application after the filing of an RCE is the same as for a CPA, except that an applicant cannot file an RCE to obtain examination of a patentably distinct invention as in a divisional CPA. With regard to first action final practice, the action immediately subsequent to the filing of an RCE may be made final only

if the conditions set forth in section 706.07(b) of the *Manual of Patent Examining Procedure* for making a first action final in a continuing application (such as a CPA) are met. *See Request for Continued Examination Practice and Changes to Provisional Application Practice,* 65 FR at 50096, 1238 *Off. Gaz. Pat. Office* at 17.

Comment 10: Several comments opposed the proposed change to eliminate CPA practice (as to utility and plant applications) on the basis that a continuing application under § 1.53(b) (non-CPA) requires the applicant to copy and file papers to generate a new file and this is burdensome when compared with the single paper necessary to file a CPA (which the Office recognized when implementing CPA practice). One comment also argued that continuing applications under § 1.53(b) place a greater burden on the Office than do CPAs because CPAs do not require any pre-examination processing and will be picked up by the examiner for action in a more timely fashion than continuing applications under § 1.53(b). One comment noted that applicants with ''deep pockets'' will be able to file a continuing application under § 1.53(b) but that small entities will be more severely impacted.

Response: While a continuing application under § 1.53(b) requires the applicant to copy and file papers to generate a new file, the Office must now publish applications (including CPAs) at eighteen months from its earliest claimed filing date and the application papers (specification, drawings, oath or declaration) are required for the eighteen-month publication process. In most situations in which an applicant would formerly have filed a CPA, the applicant will still be able to avoid filing the application papers necessary for a continuing application under § 1.53(b) by filing an RCE.

Comment 11: One comment opposing the elimination of CPA practice suggested that a substantial number of unnecessary CPAs are filed because the Office has failed to adequately warn the patent bar and its clients that a CPA can be more expensive for the client than an RCE. The comment stated that fewer CPAs would be filed if the Office were to better educate the public on that cost difference.

Response: The Office has a Web page (*http://www.uspto.gov/web/offices/dcom/olia/aipa/index.htm*) devoted to information concerning the AIPA and the Office's implementation of the AIPA. The Web page contains (among other information) a chart explaining the various differences (including fees) between a CPA, an RCE, and a submission under § 1.129(a) (*http://www.uspto.gov/web/offices/dcom/olia/aipa/comparison_of_cpa_practice.htm*). The Office also provided numerous presentations during fiscal years 2000 and 2001 (including a series of road show presentations) to educate the patent bar and general public about the AIPA and the Office's implementation of the AIPA (including RCE practice). Nevertheless, the elimination of CPA practice (as to utility and plant applications) will moot the issue of unnecessary CPAs being filed.

Comment 12: One comment opposing the elimination of CPA practice suggested that a substantial number of unnecessary CPAs are filed because the Office does not allow an applicant to voluntarily publish an application filed before but pending on November 29, 2000, unless a copy of the application is submitted under the new electronic filing system (EFS), and that EFS is impossible or extremely burdensome for many applicants, or for applications with many formulae or symbols, or for companies with ''firewall'' problems for transmissions of very large documents by electronic mail message. The comment stated that the filing of a CPA is by far the best way to obtain voluntary publications (and fully accurate reproductions) of most applications filed before November 29, 2000.

Response: Any applicant wishing to file a CPA to effectively obtain publication of an application filed before November 29, 2000, would have filed a CPA for this purpose shortly after November 29, 2000. Nevertheless, the Office has received approximately 470 EFS submissions of a copy of an application for eighteen-month publication purposes (for publication of an application as-amended under § 1.215(c), for publication of an application as-redacted under § 1.217, for voluntary publication under § 1.221(a), and for republication of an application under § 1.221(a)). The Office has also received approximately 7,600 EFS submissions of new application filings. The Office has a Patent Electronic Business Center (EBC) to assist applicants who find EFS burdensome or have other problems using EFS. The Patent EBC Web page is located at (*http://www.uspto.gov/ebc/index.html*), and the EBC Customer Support Center can be reached by telephone at (703) 305–3028.

Comment 13: One comment opposing the elimination of CPA practice suggested that the Office could reduce the number of CPAs by changing the current Office practice of refusing to consider even the most minor of amendments under § 1.116 (not requiring any new art search).

Response: The Office did not propose to change the practice concerning amendments after final action or appeal under § 1.116. Section 1.116(c) permits entry of an amendment after final rejection or appeal upon a showing of good and sufficient reasons why the amendment is necessary and was not presented earlier. An applicant may file an RCE under § 1.114 to obtain entry of an amendment that was refused entry under § 1.116.

Rule Making Considerations

Regulatory Flexibility Act

The Deputy General Counsel for General Law, United States Patent and Trademark Office certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule do not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This final rule eliminates CPA practice as to utility and plant applications. This change does not have a significant economic impact on any business because: (1) Any applicant (including small entities) in a utility or plant application filed before June 8, 1995, can obtain further examination of the application by filing either a continuing application under § 1.53(b) or a submission under § 1.129(a) (if the application is eligible for § 1.129(a) practice); (2) any applicant (including small entities) in a utility or plant application filed on or after June 8, 1995, can obtain further examination of the application by filing either an RCE under 35 U.S.C. 132(b) and § 1.114 or a continuing application under § 1.53(b); and (3) any applicant (including small entities) in a design application can continue to obtain further examination of the application by filing either a CPA under § 1.53(d) or a continuing application under § 1.53(b).

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control numbers 0651–0031 and 0651–0032. The Office submitted these information collections to OMB for its review and approval because this final rule will increase the number of RCEs. The principal impact of the changes in this final rule is to eliminate CPA practice with respect to utility and plant applications.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08/21–27/30–32/35–37/42/43/61/62/63/64/67/68/91/92/96/97/PTO–2053/PTO–2055.

Type of Review: Regular Submission (currently under review).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 2,208,339.

Estimated Time Per Response: Between 1 minute 48 seconds and 8 hours.

Estimated Total Annual Burden Hours: 830,629 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.

Type of Review: Regular Submission (currently under review).

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: Between 24 minutes and 10 hours, 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.53 is amended by revising paragraphs (d)(1), (d)(3), and (e)(1) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The application is for a design patent;

(ii) The prior nonprovisional application is a design application that is complete as defined by § 1.51(b); and

(iii) The application under this paragraph is filed before the earliest of:

(A) Payment of the issue fee on the prior application, unless a petition under § 1.313(c) is granted in the prior application;

(B) Abandonment of the prior application; or

(C) Termination of proceedings on the prior application.

* * * * *

(3) The filing fee for a continued prosecution application filed under this paragraph is the basic filing fee as set forth in § 1.16(f).

* * * * *

(e) * * *

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a period of time within which to correct the filing error. If, however, a request for an application under paragraph (d) of this section does not meet the requirements of that paragraph because the application in which the request was filed is not a design application, and if the application in which the request was filed was itself filed on or after June 8, 1995, the request for an application under paragraph (d) of this section will be treated as a request for continued examination under § 1.114.

* * * * *

Dated: May 23, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–13534 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 252 and 257

[Docket No. 2003—1 CARP]

Filing of Claims for Cable and Satellite Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: The Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the cable and satellite royalty funds for the year 2002, to avoid potential problems with mail delivery. Claimants are strongly encouraged to file their cable and satellite claims electronically, utilizing the special procedures described in this document to ensure that their claims are timely received.

EFFECTIVE DATE: May 30, 2003.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540 from July 1, 2003 through July 31, 2003. Online submissions should be made to the following: for cable claims *''http://www.copyright.gov/carp/cable/claims.html'';* for satellite claims *''http://www.copyright.gov/carp/satellite/claims.html''. See* **SUPPLEMENTARY INFORMATION** for information about on-line electronic filing through the Copyright Office website. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Senior Attorney or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., places a statutory obligation on cable systems who retransmit over-the-air broadcast signals to submit royalty fees to the Copyright Office for such retransmissions. Distribution of the royalty fees is made to copyright owners whose works were embodied in those retransmissions made by cable systems. 17 U.S.C. 111(d)(3). In order to claim eligibility for a distribution of cable royalty fees, a claimant must submit to the Copyright Office a claim during the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 111(d)(4)(A). The regulations governing the content and submission of cable claims are found at 37 CFR part 252.

Likewise, copyright owners whose works were embodied in over-the-air television broadcast signals retransmitted by satellite carriers may seek a distribution of the satellite royalty fees collected by the Copyright Office. 17 U.S.C. 119. Eligibility for satellite royalty fees is predicated upon the submission of a claim in the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 119(b)(4)(A). The regulations governing the content and submission of satellite claims are found at 37 CFR part 257.

For both cable and satellite, a claim is considered timely filed with the Copyright Office if it is hand delivered to the correct office within the Copyright Office during the month of July, or if it is mailed to the correct address and it bears a July U.S. Postal Service postmark. *See* 37 CFR 252.4 (cable); 37 CFR 257.4 (satellite). The regulations do not provide for the filing of cable and satellite claims by alternative methods such as electronic submission.

Unfortunately, the Office has experienced disruptions of postal service since October 17, 2001. *See* 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). While mail delivery to the Office has resumed, the Office continues to experience delays in receipt of its mail, due in part to the diversion of mail to an off-site location for screening. Consequently, last year the office offered and recommended alternative methods for the filing of cable and satellite claims to the 2001 royalty funds. *See* 67 FR 21176 (April 30, 2002). The Office is offering and recommending the same alternative filing methods this year for claims to the 2002 royalty funds.

Moreover, claimants are strongly advised to send their claims early in the month of July. Persons submitting claims at the end of the month risk missing the deadline for submission of claims.

Claimants are further advised that this Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. *See* 37 CFR parts 252 (cable) and 257 (satellite).

Acceptable Methods of Filing Cable and Satellite Claims for the Year 2002

Claims to the 2002 cable and satellite royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their cable and satellite claims, the Office encourages claimants who do not file their claims electronically to deliver their claims personally by 5 p.m. E.S.T. on any business day, during the month of July, 2003, and no later than July 31, 2003, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers may be subject to screening at an off-site facility before being delivered to the Office and may be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on July 31, 2003. Thus, claims should be hand delivered by the claimant or a representative of the claimant (*i.e.*, the claimant's attorney or a member of the attorney's staff) directly to the Office of the General Counsel.

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

b. On-line Submission

The Office has devised on-line electronic forms for filing both single and joint cable and satellite claims from July 1, 2003 through July 31, 2003. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. Cable forms will be posted on the Office Web site at *''http://www.copyright.gov/carp/cable/claims.html''.* Satellite forms will be posted at *''http://www.copyright.gov/carp/satellite/claims.html''.* Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-

line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document (''PDF'') format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or (in the case of text-only files) in ASCII text. There will be an ''attach'' button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the names and addresses of the joint claimants. *See* 37 CFR 252.3(b)(1) and 257.3(b)(1).

The cable and satellite forms will be available for use during the month of July. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on July 31, 2003. Specifically, the completed electronic forms must be received by the Office's server by that time. Any claim received after that time will be considered as untimely filed. Claimants who file electronically will receive an electronic mail message in response, stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims on-line are strongly encouraged to send their claim no later than July 30, 2003, in order to better ensure timely receipt by the Office.

When filing claims on-line, all provisions set forth in 37 CFR part 252 and 257 apply except §§ 252.3(b)(5) and 257.3(b)(5), which require the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

c. By Mail

Sections 252.4(a)(2) and 257.4(a)(2) direct claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to secure the only acceptable proof of a timely filing. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the month of July, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 252.4(e) and 257.4(e). Claimants whose claims were received after July 31, with only a business meter mark, and who have been unable to produce the certified mail receipt, have had their claims rejected as untimely.

As noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail by the Copyright Office. Such delays may hamper the Office's ability to compile a claimant list, and may affect the Office's ability to make partial distributions of cable and satellite funds not in controversy.[1] Consequently, the Office suggests that claimants use the mail only if none of the other methods outlined above are feasible. Claims sent by mail should be addressed in accordance with §§ 252.4(a)(2) and 257.4(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after July 31, 2003, will be rejected as being untimely filed. Claimants who have ignored this rule have had their claims rejected.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 252 for cable claims and part 257 for satellite claims.

Faxes Not Permitted

Although the Copyright Office permitted the submission of 2002 Digital Audio Recording Technology (''DART'') claims via facsimile transmission, the Office has determined that, due to the high volume of cable and satellite claims received by the Office relative to DART claims, it is impractical to permit the faxing of cable and satellite claims. Consequently, any cable or satellite claims received by the Copyright Office via facsimile transmission will not be accepted.

[1] The Office also notes that some of the mail it has received has been damaged due to the decontamination process. Damage or destruction of claims sent by mail could adversely affect a claimant's eligibility for cable or satellite royalties.

Waiver of Regulation

The regulations governing the filing of cable and satellite claims require ''the original signature of the claimant or of a duly authorized representative of the claimant.'' § 252.3(b) (cable); § 257.3(b) (satellite). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2002 cable and satellite royalty funds. The Office is not waiving the statutory deadline for filing either cable or satellite claims, a deadline the Office has no power to waive. *See, United States* v. *Locke,* 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by July 31, 2003.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' *Northeast Cellular Telephone Company* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continued problems with the delivery of the mail constitutes a special circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that cable and satellite claims bear the original signature of the claimant or of a duly authorized representative of the claimant when, and only when, such claim is filed electronically.

Dated: May 23, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–13579 Filed 5–29–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 147–200329; FRL–7505–3]

Approval and Promulgation of Implementation Plans, Kentucky: Approval of Revisions to Maintenance Plan for Northern Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the state implementation plan (SIP) of the Commonwealth of Kentucky to

revise the motor vehicle emission budgets (MVEBs) for the Northern Kentucky 1-hour ozone maintenance area for the year 2010. The Northern Kentucky maintenance area, a subset of the Cincinnati-Hamilton maintenance area, includes the three Kentucky counties of Boone, Campbell and Kenton. The Commonwealth's submittal also clearly identifies that the Ohio portion and the Kentucky portion of the Cincinnati-Hamilton maintenance area will have subarea budgets for the purposes of implementing transportation conformity.

EFFECTIVE DATE: This rule will be effective June 30, 2003.

ADDRESSES: All comments should be addressed to: Michele Notarianni; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. ((404) 562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, (404) 562–9031, *notarianni.michele@epa.gov*).

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. ((502) 573–3382).

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. ((404) 562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 2003, the Commonwealth of Kentucky, through the Department of Air Quality, submitted a request for parallel processing of a revision to the Kentucky SIP to replace the MVEBs for the Northern Kentucky Maintenance area for 2010. The revision to the MVEBs is allowable because of an available safety margin for volatile organic compounds and nitrogen oxides for the Northern Kentucky portion of the maintenance area. The Commonwealth also identifies subarea budgets for the Ohio portion and the Kentucky portion of the Cincinnati-Hamilton maintenance area for the purposes of implementing transportation conformity. This revision was in response to a request from the Ohio, Kentucky, Indiana Regional Council of Governments for revised MVEBs. Ohio will make a similar request for subarea budgets for this area in an upcoming revision to the Cincinnati-Hamilton maintenance plan.

The Commonwealth's comment period for this action closed March 26, 2003. The Commonwealth held a public meeting on March 26, 2003, to receive final comments on this requested action. With the exception of a request from EPA for a clarification to be provided in the final submittal, the Commonwealth did not receive any comments. On May 15, 2003, EPA received the final SIP revision request from the Commonwealth for final review and approval. As mentioned previously, EPA processed this request on a parallel track to the Commonwealth. On March 19, 2003, (68 FR 13249) EPA published a notice of proposed rulemaking (NPR) to approve the Commonwealth's SIP revision. That NPR provides a detailed description of this action and EPA's rationale for proposed approval. The public comment period for this action ended on April 19, 2003. No comments, adverse or otherwise, were received on EPA's proposal.

II. Final Action

EPA is approving the Commonwealth's SIP revision because it meets all of the requirements of section 110 of the Clean Air Act. Additionally, this SIP revision meets the applicable requirements of the Transportation Conformity Rule.

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 July 29, 2003. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 20, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of 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 S—Kentucky

■ 2. Section 52.920(e) is amended by adding in numerical order a new entry for ''Appendix 24'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
*	* * *	*	*	*
24	Northern Kentucky Maintenance Plan revisions ...	05/02/03	05/30/03	[68 FR 32384].

[FR Doc. 03–13417 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0088; FRL–7308–6]

Methoxyfenozide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide in or on cranberry; okra; pea, blackeyed, seed; pea, southern, seed; turnip, greens; and vegetable, cucurbit, group 9. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective May 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0088, must be received on or before July 29, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Please follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@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 identification ID number OPP–2003–0088. 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, 1921 Jefferson Davis Hwy., 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/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

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.

II. Background and Statutory Findings

In the **Federal Register** of August 14, 2002 (67 FR 52996) (FRL–7191–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition 2E6441 by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing. In the **Federal Register** of March 21, 2003 (68 FR 13917) (FRL–7297–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (3E6527, 3E6528, and 3E6533) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.544 be amended by establishing tolerances for residues of the insecticide methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide, in or on cranberry at 0.5 parts per million (ppm); okra at 2.0 ppm; pea, blackeyed, seed at 4.0 ppm; pea, southern, seed at 4.0 ppm; turnip, greens at 30 ppm; and vegetable, cucurbit, group 9 at 0.3 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of methoxyfenozide on cranberry at 0.5 ppm; okra at 2.0 ppm; pea, blackeyed, seed at 4.0 ppm; pea, southern, seed at 4.0 ppm; turnip, greens at 30 ppm; and vegetable, cucurbit, group 9 at 0.3 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by methoxyfenozide is discussed in Unit II.A. of the **Federal Register** of September 20, 2002 (67 FR 59193) (FRL–7198–5).

B. Toxicological Endpoints

The dose at which no observed adverse effects levels are (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern. However, the lowest dose observed at which adverse effects levels of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is discussed in Unit II.B. of the **Federal Register** of September 20, 2002 (67 FR 59193).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the

residues of methoxyfenozide, in or on a variety of raw agricultural commodities including pome fruit, cottonseed, and animals (except poultry). Residues in plants, milk, meat and fat are regulated in terms of parent compound only. Residues in liver and meat byproducts (except liver) are regulated in terms of combined residues of methoxyfenozide and its glucuronide metabolite (RH-141,518). Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 or 1994–1996, nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A Tier 1 (assumptions: Tolerance level residues and 100 percent crop treated) chronic dietary risk assessment was conducted via DEEM™. The established tolerances of 40 CFR 180.544 and the proposed tolerances were included in the analysis. DEEM™ default processing factors (from DEEM™ Version 7.76) were used for all processed commodities that do not have individual tolerances.

iii. *Cancer*. Methoxyfenozide is classified as a ''not likely'' human carcinogen.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of methoxyfenozide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentrations in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to methoxyfenozide they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS model, the EECs of methoxyfenozide for surface water are estimated to be 43 parts per billion (ppb) for acute, and 30 ppb for chronic. Based on the SCI-GROW model the EEC of methoxyfenozide for acute and chronic exposures for ground water are estimated to be 3.5 ppb.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to methoxyfenozide and any other substances and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE

analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide.

3. *Conclusion*. There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

- Based on weight-of-evidence considerations, EPA determined that a developmental neurotoxicity study in rats is not required to support the registration of methoxyfenozide.
- In developmental toxicity studies in rats and rabbits, no increased susceptibility in fetuses as compared to maternal animals was observed following *in utero* exposures.
- In a 2-generation reproduction study in rats, no increased susceptibility in pups as compared to adults was observed following *in utero* and postnatal exposures.
- The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of methoxyfenozide.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure milligrams/kilogram/day (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits. Accordingly, no acute risk is expected from exposure to methoxyfenozide.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food will utilize 20.5% of the cPAD for the U.S. population, 26.4% of the cPAD for all infant <1 year old, and 46.4% of the cPAD for children 1–2 years old. There are no residential uses for methoxyfenozide that result in chronic residential exposure to methoxyfenozide. In addition, there is potential for chronic dietary exposure to methoxyfenozide in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO METHOXYFENOZIDE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.102	20.5	30	3.5	2,800
All infants (<1 year old)	0.102	26.4	30	3.5	750
Children (1–2 years old)	0.102	46.4	30	3.5	550
Females (13–49 years old)	0.102	18.3	30	3.5	2,500

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has classified methoxyfenozide as a ''not likely'' human carcinogen according to the EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996). This classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies. Therefore, methoxyfenozide is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The similar methods that are used vary depending on the matrices involved. The enforcement method TR 34–98–87 high performance liquid chromotography using ultra-violet detection (HPLC/UV) was used for data collection in all crop field trials on the subject crops. It measures residues of methoxyfenozide per se, and is considered to be a adequate both for data collection and for tolerance enforcement.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue levels established for residues of methoxyfenozide in or on the subject crops.

V. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide, benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide, in or on cranberry at 0.5 ppm; okra at 2.0 ppm; pea, blackeyed, seed at 4.0 ppm; pea, southern, seed at 4.0 ppm; turnip, greens at 30 ppm; and vegetable, cucurbit, group 9 at 0.3 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0088 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 29, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov,* or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0088, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2003.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.544 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cranberry	0.5
* * * * *	
Okra	2.0

Commodity	Parts per million
Pea, blackeyed, seed	4.0
Pea, southern, seed	4.0
* * * * *	
Turnip, greens	30
* * * * *	
Vegetable, cucurbit, group 9	0.3
* * * * *	

[FR Doc. 03–13563 Filed 5–29–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0133; FRL–7306–8]

Clothianidin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clothianidin in or on canola, corn, and milk. In addition, tolerances are established for indirect or inadvertent residues of clothianidin in or on nongrass animal feed; cereal grain forage, fodder and straw; grass forage, fodder and hay; and soybean forage and hay. Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0133, must be received on or before July 29, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@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 identification (ID) number OPP–2003–0133. 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, 1921 Jefferson Davis Hwy., 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/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

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.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2001 (66 FR 57079) (FRL–6809–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6315) by Bayer Corporation, 8400 Hawthorn Road, Kansas City, MO 64120. That notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on canola, seed at 0.01 parts per million (ppm); corn, field, grain at 0.01 ppm; corn, pop, grain at 0.01 ppm; corn, sweet, kernel plus cob with husk removed at 0.01 ppm; corn, field, forage at 0.10 ppm; corn, sweet, forage at 0.10 ppm; corn, field, stover at 0.10 ppm; corn, sweet, stover at 0.10 ppm; corn, pop, stover at 0.10 ppm; and milk at 0.01 ppm. Following the review of all the data, tolerances are also required on the following rotational crops, which are used only for livestock feeds. These tolerances do not impact the dietary risk

assessment since these residues are significantly lower than those in feed items from the crops which are treated directly with clothianidin and/or thiamethoxam. Tolerances are established on animal feed, nongrass at 0.02 ppm; grain, cereal, forage, fodder and straw at 0.02 ppm; grass, forage, fodder and hay at 0.02 ppm; soybean, forage at 0.02 ppm; and soybean, hay at 0.02 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of clothianidin on canola, seed at 0.01 ppm; corn, field, grain at 0.01 ppm; corn, pop, grain at 0.01 ppm; corn, sweet, kernel plus cob with husk removed at 0.01 ppm; corn, field, forage at 0.10 ppm; corn, sweet, forage at 0.10 ppm; corn, field, stover at 0.10 ppm; corn, sweet, stover at 0.10 ppm; corn, pop, stover at 0.10 ppm; and milk at 0.01 ppm, animal feed, nongrass at 0.02 ppm; grain, cereal, forage, fodder and straw at 0.02 ppm; grass, forage, fodder and hay at 0.02 ppm; soybean, forage at 0.02 ppm; and soybean, hay at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clothianidin are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents (rats)	NOAEL: 27.9/34.0 milligrams/kilogram/day (mg/kg/day) (male/female) LOAEL: 202.0/254.2 mg/kg/day (male/female: decreased body weight (bwt) and bwt gain)
870.3150	90–Day oral toxicity in nonrodents (dogs)	NOAEL: 19.3/42.1 mg/kg/day (male/female) LOAEL: 40.9/61.8 mg/kg/day (thinness, decreased bwt, bwt gain and anemia (one male); decreased white blood cells, albumin, and total protein (female)
870.3200	21/28–Day dermal toxicity (rats)	NOAEL: 1,000 mg/kg/day (highest dose tested) LOAEL: > 1,000 mg/kg/day
870.3700	Prenatal developmental in rodents (rats)	Maternal NOAEL: 10 mg/kg/day Maternal LOAEL: 40 mg/kg/day (decreased bwt gain and food consumption) Developmental NOAEL: 125 mg/kg/day Developmental LOAEL: cannot be established
870.3700	Prenatal developmental in nonrodents (rabbit)	Maternal NOAEL: 25 mg/kg/day Maternal LOAEL: 75 mg/kg/day (increased incidences of clinical signs (scant feces and orange urine), mortalities, decreased food consumption, early delivery, abortion, and decreased bwt gain) Developmental NOAEL: 25 mg/kg/day Developmental LOAEL: 75 mg/kg/day (premature deliveries, decreased gravid uterine weights, an increased litter incidence of a missing lobe of the lung and decreased litter average for ossified sternal centra per fetus)

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental systemic NOAEL: 31.2/36.8 mg/kg/day (male/female) Parental systemic LOAEL: 163.4/188.8 mg/kg/day (male/female) (decreased bwt, bwt gain and absolute and relative thymus weights) Offspring systemic NOAEL: 9.8/11.5 mg/kg/day (male/female) Offspring systemic LOAEL: 31.2/36.8 mg/kg/day (male/female: decreased bwt gains and delayed sexual maturation (male); decreased absolute thymus weights in F1 pups of both sexes and an increase in stillbirths in both generations) Reproductive NOAEL: 31.2/188.8 mg/kg/day (male/female) Reproductive LOAEL: 163.4/not established mg/kg/day (male/female: decreased sperm motility, and increased number of sperm with detached heads in both generations)
870.4100	Chronic toxicity dogs	NOAEL: 46.4/40.1 mg/kg/day (male/female) LOAEL: Not established/52.9 mg/kg/day (male/female: clinical evidence of anemia in females). Note: dose-related decreases in ALT activity observed in mid- and high-dose males and females
870.4200	Carcinogenicity mice	NOAEL: 171.4/65.1 mg/kg/day (male/female) LOAEL: 254.1/215.9 mg/kg/day (male/female: decreased bwt and bwt gain; decreased food consumption and food efficiency in males at the LOAEL). No evidence of carcinogenicity
870.4300	Chronic feeding/Carcinogenicity rat	NOAEL: 82.0/32.5 mg/kg/day (male/female) LOAEL: 156.5/97.8 mg/kg/day (male/female, decreased bwt and food consumption and altered hepatocellular eosinophilic focus of the liver in both sexes; ovary interstitial gland hyperplasia and increased lymphohistiocytic infiltrate in females; and slightly increased incidences of pelvic mineralization and transitional cell hyperplasia in the kidney, mottled livers of males. No evidence of carcinogenicity
870.5100	Gene Mutation bacterial reverse mutation assay Parent	Small, but significant increase in frequency of histidine revertants in TA1535 strain treated at 1,500 and 5,000 µg/plate +/-S9; still present but weaker in its absence. The positive response was only reproducible at 5,000 µg/plate +/-S9. Clothianidin considered mutagenic under conditions of this test
870.5100	Gene Mutation bacterial reverse mutation assay Parent	No mutagenic activity in bacteria (*Salmonella typhimurium* and *Escherichia coli*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay Parent	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay Parent	Only TA 1535 tested. No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay BN0335E2 metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay TZMU metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay methyl guanidine intermediate	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay TZNG metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay TMG metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5100	Gene Mutation bacterial reverse mutation assay BN0230M metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay MAI metabolite	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation bacterial reverse mutation assay N-Methylnitroguanid in intermediate	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation - bacterial reverse mutation assay TI 435-Triazan intermediate	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5100	Gene Mutation - bacterial reverse mutation assay TI 435-CCMT- Adduct	No mutagenic activity in bacteria (*Salmonella typhimurium*) under conditions of this assay
870.5300	Gene Mutation - *in vitro* mammalian cell gene mutation test (L5178Y TK +/- mouse lymphoma cells) Parent	Increases in mutant frequency with and without S9 at dose levels that were cytotoxic. The observed response was primarily due to small colony formation, indicating clastogenic activity
870.5300	Gene Mutation - *in vitro* mammalian cell gene mutation test (V79-HPRT Assay) Parent	No increase in mutant frequency under the conditions of the study
870.5395	Cytogenetics - mammalian erythrocyte micronucleus test Parent	Clothianidin is considered to be neither clastogenic nor aneugenic under these test conditions
870.5375	Cytogenetics - *in vitro* mammalian chromosome aberration test (CHL Cells) Parent	Significant increases in frequency of cells with structural aberrations. Predominant types were chromatid breaks and exchanges. There was, however, no clear indication of a dose-related response in either the presence or absence of S9 activation
870.5500	Other Effects - DNA Repair Test in *Bacillus subtillis* Parent	No potential for DNA damage under these conditions
870.5550	Other Effects - (UDS) in Mammalian Cells in Culture Parent	No evidence (or a dose related positive response) that UDS was induced
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL: Not established LOAEL: 100 mg/kg (FOB: decreased arousal and decreased motor and locomotor activity)
870.6200	Subchronic neurotoxicity screening battery (rat)	NOAEL: 60.0/71.0 mg/kg/day (male/female) LOAEL: 177.0/200.1 mg/kg/day (male/female: Slightly decreased food consumption, bwt and bwt gains)
870.6300	Developmental neurotoxicity (rat)	Maternal NOAEL: 42.9 mg/kg/day Maternal LOAEL: 142 mg/kg/day (decreased bwt, bwt gains, and food consumption) Offspring NOAEL: 12.9 mg/kg/day Offspring LOAEL: 42.9 mg/kg/day (decreased bwt and bwt gains)
870.7485	Metabolism and pharmacokinetics (rat)	Overall recovery: 95–100%. Readily absorbed and excreted within 96 hours following a single 2.5 mg/kg bwt or repeated oral dose of 25 mg/kg bwt, but at a dose of 250 mg/kg, absorption became biphasic and was saturated

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics (mouse)	Of the administered radioactivity, 98.7–99.2% was recovered. Readily absorbed and excreted within 168 hours following a single oral dose of 5 mg/kg bwt
870.7600	Dermal Penetration - monkey	Dermal absorption as the sum of urinary and fecal excretion and Cage/Pan/Chair Wash, Debris was 0.24 (+ 0.11) as percent of dose. Adjustment of the direct absorption determination was not necessary because recovery from the dermal dose was ≤90%. A value of 1% dermal absorption was considered appropriate for use in risk assessment. This estimation takes into account any variability that would have likely occurred with testing several dose levels
	Special study: Neurotoxicity and pharmacology mouse	NOAEL: 25 mg/kg/day (male/female) LOAEL: 50 mg/kg bw mg/kg/day (transient signs of decreased spontaneous motor activity, tremors, and deep respirations)

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. EPA has concluded that the toxicology database for clothianidin is not complete. Due to evidence of effects on the immune system and that juvenile rats appear to be more susceptible to these effects, EPA has determined that testing should be conducted to assess immune system function in adults and in young animals following developmental exposures. Therefore, a 10X database UF is to be applied to all dietary exposure endpoints for the lack of a developmental immunotoxicity study.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for clothianidin used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLOTHIANIDIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF[1]	Special FQPA SF[2] and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	Developmental NOAEL = 25 UF = 1000[1] Acute RfD = 0.025 mg/kg	FQPA SF = 1 aPAD = acute RfD ÷FQPA SF= 0.025 mg/kg	Developmental rabbit study Developmental LOAEL = 75 mg/kg/day based on an increased litter incidence of a missing lobe of the lung
Acute Dietary (General population)	NOAEL = 25 UF = 1000[1] Acute RfD = 0.025 mg/kg	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.025 mg/kg	Special Neurotoxicity/Pharmacology Study in Mice and Rats LOAEL = 50 mg/kg based on transient signs of decreased spontaneous motor activity, tremors and deep respirations

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLOTHIANIDIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF[1]	Special FQPA SF[2] and LOC for Risk Assessment	Study and Toxicological Effects
Chronic Dietary (All populations)	Offspring NOAEL= 9.8 UF = 1000[1] Chronic RfD = 0.0098 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.0098 mg/kg/day	2–Generation Reproduction Study Offspring LOAEL = 31.2 mg/kg/day based on decreased mean bwt gain and delayed sexual maturation, decreased absolute thymus weights in F1 pups and an increase in stillbirths in both generations
Cancer (oral, dermal, inhalation)	Classification: Not likely		

1 An additional 10X database uncertainty factor for lack of a developmental immunotoxicity study.
2 The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Currently there are no tolerances established for clothianidin alone on any commodity. However, clothianidin is a major metabolite of thiamethoxam, and tolerances for the combined residues of thiamethoxam and its metabolite clothianidin have been established under 40 CFR part 180.565 for both plant and livestock commodities. Tolerances for thiamethoxam range from 0.02 ppm to 1.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from clothianidin in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis was a conservative, Tier I assessment which was based on tolerance level residues and the assumption of 100% crop treated. Although the only proposed uses for clothianidin are on canola and corn, clothianidin is a major metabolite of thiamethoxam which has many registered uses and several pending uses. As a result, residues of clothianidin which would theoretically result from the metabolism of thiamethoxam were included in the analysis. In crop field trials and in animal feeding studies, the quantities of both clothianidin and thiamethoxam were measured. The ratio of clothianidin to thiamethoxam in each commodity was multiplied by the respective thiamethoxam tolerance level to arrive at the theoretical maximum clothianidin residue level which would be present. These maximum clothianidin residues were used in the acute analysis. For the commodities which have both thiamethoxam tolerances and proposed clothianidin tolerances (i.e., sweet corn, field corn, pop corn, canola, and milk), the proposed clothianidin tolerances were added to the residues which result from use of thiamethoxam.

As this is a Tier I assessment, dietary exposure and risk at the 95th percentile of exposure are reported. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the aPADs are all below 100%). The most highly exposed population subgroup is children 1 to 2 years of age, which utilizes 16% of the aPAD.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis was a conservative, Tier I assessment which was based on tolerance level residues and the assumption of 100% crop treated. As stated previously, although the only proposed uses for clothianidin are on canola and corn, clothianidin is a major metabolite of thiamethoxam which has many registered uses and several pending uses. As a result, residues of clothianidin which would theoretically result from the metabolism of thiamethoxam were included in the analysis. In crop field trials and in animal feeding studies, the quantities of both clothianidin and thiamethoxam were measured. The ratio of clothianidin to thiamethoxam in each commodity was multiplied by the respective thiamethoxam tolerance level to arrive at the theoretical maximum clothianidin residue level which would be present. These maximum clothianidin residues were used in the chronic analysis. For the commodities which have both thiamethoxam tolerances and proposed clothianidin tolerances (i.e., sweet corn, field corn, pop corn, canola, and milk), the proposed clothianidin tolerances were added to the residues which result from use of thiamethoxam.

The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the chronic population adjusted doses (cPADs) are all below 100%). The most highly exposed population subgroup is children 1 to 2 years of age, which utilizes 18% of the cPAD.

iii. *Cancer*. EPA has determined that clothianidin is not likely to be a human carcinogen and EPA, therefore, does not expect it to pose a cancer risk. As a result, a quantitive cancer dietary exposure analysis was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clothianidin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of clothianidin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir.

The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clothianidin, they are further discussed in the aggregate risk sections.

Based on the FIRST and SCI-GROW models, the EECs of clothianidin for acute exposures are estimated to be 3.97 parts per billion (ppb) for surface water and 1.46 ppb for ground water. The EECs for chronic exposures are estimated to be 2.14 ppb for surface water and 1.46 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Clothianidin is not registered for use on any sites that would result in residential exposure. Clothianidin is a major metabolite of the insecticide thiamethoxam in plants and animals. Since there are also no residential uses of thiamethoxam, possible residential exposure to clothianidin due to thiamethoxam uses is not expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether clothianidin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clothianidin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clothianidin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. No quantitative or qualitative susceptibility was observed in either of the developmental rat or rabbit studies. Quantitative susceptibility was observed in both the reproduction and developmental neurotoxicity studies; however, the degree of concern for these studies is low because the observed effects are well characterized and there are clear NOAELs/LOAELs in each case. In addition, the endpoint of concern is the one that is being used for short-, intermediate- and long-term dietary and non-dietary exposure risk assessments. There are no residual uncertainties. Therefore, there are no to low concerns with regard to prenatal and/or postnatal toxicity.

3. *Conclusion*. The toxicology database for clothianidin is not complete for FQPA purposes. A complete complement of acceptable developmental, reproduction, developmental neurotoxicity, mammalian neurotoxicity and special neurotoxicity studies are available; however, due to evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin data base, and since juvenile rats in the 2–generation reproduction study appear to be more susceptible to these effects, EPA has determined that testing should be conducted to assess immune system function in adults and in young animals following developmental exposures. As noted previously, a 10X database UF was applied because of the lack of this study.

The FQPA factor is removed because there are no to low concerns and no residual uncertainties with regard to prenatal and/or postnatal toxicity. As stated above, no quantitative or qualitative susceptibility was observed in either of the development rat or rabbit studies, and the observed effects are well characterized and there are clear NOAELs/LOAELs in the reproduction and developmental neurotoxicity studies. In addition, the acute and chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100% crop treated information for all commodities. By using these screening-level assessments, acute and chronic exposures/risks will not be underestimated. Furthermore, the dietary drinking water assessment (Tier I estimates) uses values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. Finally, there are no residential uses for either clothianidin or thiamethoxam.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration

in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to clothianidin will occupy 7.3% of the aPAD for the U.S. population, 5.4% of the aPAD for females 13 years and older, 11% of the aPAD for all infants (less than 1 year old) and 16% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to clothianidin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CLOTHIANIDIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. population	0.025	7.3	3.97	1.46	810
All infants (< 1 year old)	0.025	11	3.97	1.46	220
Children (1–2 years old)	0.025	16	3.97	1.46	210
Females (13–49 years old)	0.025	5.4	3.97	1.46	710
Adults (50+ years old)	0.025	6.0	3.97	1.46	820

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clothianidin from food will utilize 5.9% of the cPAD for the U.S. population, 9.8% of the cPAD for all infants (less than 1 year old) and 18% of the cPAD for children 1 to 2 years old. There are no residential uses for clothianidin that result in chronic residential exposure to clothianidin. In addition, there is potential for chronic dietary exposure to clothianidin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLOTHIANIDIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. Population	0.0098	5.9	2.14	1.46	320
All Infants (< 1 year old)	0.0098	9.8	2.14	1.46	88
Children (1–2 years old)	0.0098	18	2.14	1.46	80
Females (13–49 years old)	0.0098	4.6	2.14	1.46	280
Adults (50+ years old)	0.0098	4.9	2.14	1.46	320

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clothianidin and thiamethoxam are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure

takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clothianidin and thiamethoxam are not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Clothianidin has been classified as a ''not likely human carcinogen.'' Therefore, it is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example - liquid chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of clothianidin.

C. Conditions

A developmental immunotoxicity study with comparative measures between the pups and the parents is required.

V. Conclusion

Therefore, tolerances are established for residues of clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on canola, seed at 0.01 ppm ; corn, field, grain at 0.01 ppm; corn, pop, grain at 0.01 ppm; corn, sweet, kernel plus cob with husk removed at 0.01 ppm; corn, field, forage at 0.10 ppm; corn, sweet, forage at 0.10 ppm; corn, field, stover at 0.10 ppm; corn, sweet, stover at 0.10 ppm; corn, pop, stover at 0.10 ppm; and milk at 0.01 ppm, animal feed, nongrass at 0.02 ppm; grain, cereal, forage, fodder and straw at 0.02 ppm; grass, forage, fodder and hay at 0.02 ppm; soybean, forage at 0.02 ppm; and soybean, hay at 0.02 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0133 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 29, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0133, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or

ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.586 is added to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Canola, seed	0.01
Corn, field, forage	0.10
Corn, field, grain	0.01
Corn, field, stover	0.10
Corn, pop, grain	0.01
Corn, pop, stover	0.10
Corn, sweet, forage	0.10
Corn, sweet, kernel plus cob with husk removed	0.01
Corn, sweet, stover	0.10
Milk	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect and inadvertant residues.* Tolerances are established for the indirect or inadvertent residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on the following raw agricultural commodities when present therein as a result of the application of clothianidin to crops listed in paragraph (a) of this section:

Commodity	Parts per million
Animal feed, nongrass	0.02
Grain, cereal, forage, fodder and straw	0.02
Grass, forage, fodder and hay	0.02
Soybean, forage	0.02
Soybean, hay	0.02

[FR Doc. 03–13564 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 414, and 485

[CMS–1204–CN]

RIN 0938–AL21

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on December 31, 2002, entitled, ''Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 and Inclusion of Registered Nurses in the Personnel Provision of the Critical Access Hospital Emergency Services Requirement for Frontier Areas and Remote Locations''.

EFFECTIVE DATE: This rule is effective March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 02–32503 of December 31, 2002 (67 FR 79966), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. Additionally there are various revisions to Addenda B, C, D and E. The provisions in this correction notice are effective as if they had been included in the document published December 31, 2002.

Discussion of Addenda B, C, D and E

1. In Addendum B, we assigned incorrect status indicators for the following CPT codes: Page 80111 for CPT code 67221; page 80143 for CPT codes 90723, 90740, 90743, 90744, 90746, 90747 and 90748; page 80158 for CPT codes 99026 and 99027; and page 80166 for HCPCS code J3370. We assigned incorrect status indicators and RVUS for the following CPT and HCPCS codes: Page 80147 for CPT code 92597; page 80149 for CPT codes 93315, 99315–TC, 99317 and 93317–TC; page 80156 for 95951 and 95951–TC, page 80158 for CPT code 99026 and 99027 and page 80163 for G0125 and G0125–TC. We also erroneously assigned RVUs to the following HCPCS codes that are not used for Medicare payment: Page 80164 for G0219 and G0219–26; page 80165 for G0255 and G0255–26. These corrections are reflected in correction number 12 to follow.

2. We indicated the incorrect global period in Addenda B and C for the following CPT codes: Page 80100 for CPT code 58550; pages 80074 and 80167 for CPT codes 33224; and page 80134 for CPT codes 77789, 77789–26 and 77789–TC. The corrected global period is in correction number 13 to follow.

3. In Addenda B and C, on pages 80044, 80165 and 80170, we erroneously assigned RVUs to a CPT code 0020T which is an emerging technology code and also created two new HCPCS codes (G0279 and G0280) with payments based on our valuation of this CPT code. However, assignment of RVUs for this CPT code is contrary to national policy established in the November 1, 2001 (66 FR 55269), final rule which stated that we would provide payment for emerging technology codes as determined by the carrier. In addition, based on the creation of these two G codes, we are not recognizing CPT code 0019T for Medicare purposes. Corrections for these services are in correction number 14.

4. In Addenda B on page 80097, incorrect work and practice expense RVUS were assigned to CPT code 53853. In addition, on page 80110 the RVUs listed under non-facility total and facility total were incorrect for the following codes: 66710, 66720, 66761 66762 and 66770. These corrections are reflected in correction number 15.

5. In Addenda B and C, incorrect practice expense RVUs were assigned for the following CPT codes: Page 80044 for CPT codes 10021 and 10022; page 80060 for CPT 26587; page 80084 for CPT code 42820; page 80092 for CPT codes 50080, 50081, 50236, 50240; page 80093 for CPT codes 50553, 50555, 50557, 50561, 50684 and 50690; page 80094 for CPT codes 50953, 50955, 50957, 50961, 51010, 51605, 51610, 51710, 51726 and 51726–TC; page 80095 and 80168 for CPT codes 51772, 51772–TC, 51784, 51784–TC, 51785, 51785–TC, 51792, 51792–TC, 51795, 51795–TC, 51798, 52000, 52005, 52010, 52204, 52214, 52224, 52265, 52270, 52275, 52276, 52281, 52282, 52283, 52285, 52310, 52315, 52317, 52330 and 52332; page 80096 for CPT codes 52647, 53025, 53040, 53080, 53085, 53200, 53265 and 53270; page 80093 for CPT codes 53850, 53852, 54000, 54001, 54015, 54055, 54060, 54105, 54111, 54115, 54120, 54125, 54130, 54135, 54160, 54205, 54300, 54304, 54308, 54312, 54324, 54328, 54332, 54360 and 54430; page 80098 for CPT codes 54500, 54700, 55100, 55250, 55450, and 55700; page 80099 for CPT code 55873; page 80100 for CPT code 58340; page 80109 for CPT code 65220; page 80110 for CPT code 66740; page 80110 for CPT codes 66821 and 66984; page 80111 for CPT codes 67820 and 67825; page 80117 for CPT codes 71275 and 71275–TC; page 80119 for CPT codes 72191 and 72191–TC; page 80120 for CPT codes 73206 and 73206–TC; page 80121 for CPT codes 73706 and 73706–TC; page 80122 for CPT codes 74175 and 74175–TC; page 80130 for CPT codes 76519 and 76519–TC; page 80141 for CPT code 88141; page 80145 for CPT codes 91122, 91122–TC, 92014, 92081, 92081–TC, 92083, 92083–TC, 92135 , 92135–TC, 92235; page 80146 for CPT codes 92235–TC, 92250 and 92250–TC; page 80148 for CPT code 93012; page 80153 for CPT codes 94014 and 94015; page 80163 for HCPCS codes G0124 and G0141; page 80165 and 80170 for HCPCS codes G0275, G0278 and G0281; page 80166 and 80170 for HCPCS codes G0283, G0289 and P3001. The corrected RVUs are in item number 16.

6. In Addendum D, on page 80171, the carrier numbers listed for Ohio and West Virginia are incorrect. The corrected numbers are reflected in number 17 to follow.

7. We are revising the title of Addendum E that appeared on the top of every column from page 80172 through page 80174, to read as follows: ''Updated List of CPT[1]/HCPCS Codes Used to Define Certain Designated Health Services Under the Physician Self-Referral Prohibition (Section 1877 of the Act).'' We are also correcting a number of typographical errors. On page 80172, in the second column, the last word in the second subheading concerning HCPCS level 2 codes for physical therapy/occupational therapy/ speech-language pathology services is corrected to read ''services''. On page 80173, in the third column, the description of CPT codes 93320 and 93321 is corrected to include a dash between CPT codes 93303 and 93308. On page 80174, in the first column, the description of CPT code 93325 is corrected to include a dash between 93303 and 93308. Also on page 80174, in the third column, under the first subheading, the description of CPT code 90657 is corrected to read ''Flu vaccine, 6–35 mo, im.''

Also in Addendum E, we erroneously included or excluded certain codes. On page 80172, in the first column, we erroneously included HCPCS codes P2031 and P7001 as clinical laboratory services. We are removing these codes and their descriptors, because they are not payable by Medicare and therefore are not designated health services. On page 80172, in the second column, we inadvertently omitted CPT code 92597. This code is now covered as a speech-pathology service under Medicare and, thus, is being added as a designated health service. Also on page 80172, in the second column, we included CPT 0019T as a physical therapy service. Consistent with changes made elsewhere in this correction notice, we are removing CPT code 0019T and its descriptor because it is no longer valid for Medicare purposes. On page 80174, in the third column under the first subheading, we incorrectly included CPT code 90748 and HCPCS codes Q3021, Q3022, and Q3023 as vaccines to which the physician self-referral prohibition does not apply if certain conditions are satisfied. We are removing CPT code 90748 and its descriptor because it is no longer valid for Medicare purposes. We are removing HCPCS codes Q3021, Q3022 and Q3023 and their descriptors, as these codes have been discontinued. Because CPT codes 90740, 90743, 90744, 90746 and 90747 were reactivated to replace HCPCS codes Q3021–23, we are adding in numeric order CPT codes 90740, 90743, 90744, 90746 and 90747 and their descriptors in place of the removed Q codes.

Lastly, we note that on page 80172 in the third column, we included HCPCS code G0281 as a physical therapy service. In accordance with the Medicare Program Memorandum Transmittal B–03–001 issued on January 17, 2003, Medicare coverage for this service will not begin until April 1, 2003. Although this effective date differs from the March 1, 2003, effective date for the rest of the codes that appear in Addendum E, we have left the code on the list because it is a designated health service subject to the physician self-referral prohibition. Because payment cannot be made before April 1, 2003, there are no self-referral implications until that date.

The corrections to Addendum E are shown in correction numbers 18 and 19 to follow.

II. Correction of Errors

Correction of Errors

In FR Doc. 02–32503 of December 31, 2002 (67 FR 79966), make the following corrections:

1. On page 79966, in column three, in the *Comment date* section, the seventh sentence is revised as follows to correct the referenced table number: ''* * * identified in Table 9, the interim work. * * *''

2. On page 79969, in column two in section E, ''Delay in Effective Date'', the last sentence is revised as follows to correct the effective date: ''* * * March 1, 2003 * * *''

3. In Table 6, on page 80004 for CPT code 51798, replace the value listed under the column labeled ''2003 Work RVU'' with ''0.00'' to agree with discussion on page 80009.

4. On page 80007, fifth paragraph remove the following language ''* * * *21740 Reconstructive repair of pectus excavatum or carinatum; open* and * * *'' and add ''and ''*21743 Reconstructive repair of pectus excavatum or carinatum; minimally invasive approach (Nuss procedure), with thoracoscopy*'' at the end of the paragraph.

5. On page 80013, in column two, under the discussion of G0279, G0280 and CPT code 0020T, we incorrectly discuss assignment of RVUs for this CPT code contrary to national policy established in the November 1, 2001 (66 FR 55269) final rule. (Based on this we also assigned RVUs to G0279 and G0280). Replace existing language beginning at the last paragraph in column two (''We are creating and establishing a'' * * * through the sentence prior to the discussion of Electrical Stimulation for Wound Care in the third column (* * * ''total treatments or weekly intervals.'') with the following:

''We are creating two new G codes describing extracorporeal shock wave therapy for the musculoskeletal system. Because we have created these two G codes, we will not recognize CPT code 0019T. Creation of these G codes does not imply that the services will be covered by Medicare. We believe these services are similar to other physical therapy modalities, and when covered, will be paid under the therapy fee schedule and be carrier priced.''

6. On page 80016, in the second paragraph of the second column, the phrase ''for January 1, 2003'' is revised to read ''March 1, 2003.''

7. On page 80017, Table 9— ''Additions and Deletions to the Physician Self-Referral Codes'' is amended as follows:

a. Under the title, the subheading ''HCPCS'' is corrected to read ''HCPCS/ CPT [1]'' and the subheading ''CPT [1]/ Descriptor'' is corrected to read ''Descriptor''.

b. Under the subheading ''Additions,'' CPT code 0019T and HCPCS codes Q3021, Q3022 and Q3023 and their descriptors are removed and the following CPT codes and their descriptors are added in numeric order:

90740	Hepb vacc, ill pat 3 dose im
90743	Hep b vacc, adol, 2 dose, im
92597	Oral speech device eval

c. Under the subheading ''Deletions,'' CPT codes 90744, 90746 and 90747 and their corresponding descriptors are removed and CPT code 90748 and its descriptor ''Hep b/hib vaccine, im'' is added in numeric order.

8. On page 80018, Table 9 is amended as follows:

a. Under the title, the subheading ''HCPCS'' is corrected to read ''HCPCS/ CPT [1]'' and the subheading ''CPT [1]/ Descriptor'' is corrected to read ''Descriptor''.

b. HCPCS codes P2031 ''Hair analysis'' and P7001 ''Culture bacterial urine'' are added in alphanumeric order.

c. In the footnote to Table 9, the words ''copyrighted in the'' are corrected to read ''copyright''.

9. On page 80018, the first column after Table 9 is amended as follows:

a. The first sentence is revised to read: The ''Additions'' section of Table 9 generally reflects changes to the lists of designated health services to conform them to the most recent publications of CPT and HCPCS codes.''

b. In the second sentence of the first paragraph: the first 2 words of the sentence are removed and replaced with, ''One''; and, ''0019T,'' is removed.

c. In the third sentence of the first paragraph, the phrase ''while CPT codes 0019T and 0020T are therapy codes'' is revised to read, ''while CPT code 0020T is a therapy code.''

d. In the second paragraph that continues into column two, the beginning of the third sentence through the parenthetical phrase ''(Q3021, Q3022 and Q3023)'' is revised to read, ''Table 9 also reflects the addition of 2 vaccine codes (CPT 90740 and 90743)''.

10. On page 80018, the second column is amended as follows:

a. At the end of the partial paragraph at the top of the column, the following sentence is added: ''CPT codes 90740 and 90743 were inadvertently omitted from prior years' lists of codes identifying the preventive screening tests, immunizations, and vaccines that may qualify for this exception.''

b. The first sentence of the first full paragraph is revised to read, ''The ''Deletions'' section of Table 9 generally reflects changes necessary to conform the code list to the most recent publications of CPT and HCPCS codes.''

c. The second sentence of the first full paragraph is revised by adding the word ''also,'' after the word ''We.''

11. On page 80018, in the second column, following the first full paragraph, a new paragraph is added to read as follows:

''We are deleting CPT code 90748 (''Hep b/hib vaccine, im'') and HCPCS codes P2031 (''Hair analysis'') and P7001 (''Culture bacteria urine''). CPT code 90748 is not valid for Medicare purposes. HCPCS codes P2031 and P7001 are not payable by Medicare.''

12. In Addendum B, the following codes are corrected to read as follows:

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
67221	.....	R	Ocular photodynamic ther	4.01	4.63	1.88	0.16	8.80	6.05	000
90723	.....	I	Dtap-hep b-ipv vaccine, im ...	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90740	.....	X	Hepb vacc, ill pat 3 dose im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90743	.....	X	Hep b vacc, adol, 2 dose, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90744	.....	X	Hepb vacc ped/adol 3 dose im.	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90746	.....	X	Hep b vaccine, adult, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90747	.....	X	Hepb vacc, ill pat 4 dose im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90748	.....	I	Hep b/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92597	.....	A	Oral speech device eval	0.86	1.63	0.41	0.04	2.53	1.31	XXX
93315	.....	C	Echo transescophageal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93315	TC ..	C	Echo transescophageal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93317	.....	C	Echo transescophageal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93317	TC ..	C	Echo transescophageal	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95951	.....	C	EEG monitoring/videorecord	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95951	TC ..	C	EEG monitoring/videorecord	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99026	.....	N	In-hospital on call service	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99027	.....	N	Out-of-hosp on call service ...	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0125 ...	.....	C	PET image pulmonary nodule	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0125 ...	TC ..	C	PET image pulmonary nodule	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0219 ...	.....	N	PET imgwholbod melano nonco.	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0219 ...	26 ...	N	PET imgwholbod melano nonco.	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0255 ...	.....	N	Current percep threshold tst	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0255 ...	26 ...	N	Current percep threshold tst	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3370	.....	E	Vancomycin hci injection	0.00	0.00	0.00	0.00	0.00	0.00	XXX

13. In Addenda B and C, the following codes are corrected to read as follows:

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
33224	.....		Insert pacing lead & connect	9.05	NA	3.92	0.36	NA	13.33	000
58550	.....		Laparo-asst vag hysterectomy.	14.19	NA	7.21	1.44	NA	22.84	090
77789	.....		Apply surface radiation	1.12	0.84	NA	0.05	2.01	NA	000
77789	26 ...		Apply surface radiation	1.12	0.39	0.39	0.03	1.54	1.54	000
77789	TC ..		Apply surface radiation	0.00	0.45	NA	0.02	0.47	NA	000

14. In Addenda B and C, the following codes are corrected to read as follows:

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
0019T	.....	I	Extracorp shock wave tx, ms	0.00	0.00	0.00	0.00	0.00	0.00	XXX

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
0020T	.....	C	Extracorp shock wave tx, ft ...	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0279 ...	.....	C	Excorp shock tx, elbow epi ...	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0280 ...	.....	C	Excorp shock tx, other than ..	0.00	0.00	0.00	0.00	0.00	0.00	XXX

15. In Addendum B, the following codes are corrected to read as follows:

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
53853	.....	A	Prostatic water thermother	5.24	38.96	3.67	0.27	44.47	9.18	090
66710	.....	A	Destruction, ciliary body	4.78	5.14	3.81	0.18	10.10	8.77	090
66720	.....	A	Destruction, ciliary body	4.78	5.45	4.49	0.19	10.42	9.46	090
66761	.....	A	Revision of iris	4.07	5.25	3.98	0.16	9.48	8.21	090
66762	.....	A	Revision of iris	4.58	5.33	3.97	0.18	10.09	8.73	090
66770	.....	A	Removal of inner eye lesion	5.18	5.76	4.48	0.20	11.14	9.86	090

16. In addenda B and C, the following codes are corrected to read as follows:

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-Facility	Facility total	Global
10021	.....	A	Fna w/o image	1.27	2.37	0.53	0.07	3.71	1.87	XXX
10022	.....	A	Fna w/ image	1.27	2.66	0.44	0.05	3.98	1.76	XXX
26587	.....	A	Reconstruct extra finger	14.05	6.36	4.76	1.12	21.53	19.93	090
42820	.....	A	Remove tonsils and adenoids	3.91	4.25	4.25	0.28	8.44	8.44	090
50080	.....	A	Removal of kidney stone	14.71	10.16	10.16	0.86	25.73	25.73	090
50081	.....	A	Removal of kidney stone	21.80	12.23	12.23	1.30	35.33	35.33	090
50236	.....	A	Removal of kidney & ureter ..	24.86	13.21	13.21	1.50	39.57	39.57	090
50240	.....	A	Partial removal of kidney	22.00	12.33	12.33	1.36	35.69	35.69	090
50553	.....	A	Kidney endoscopy	5.99	14.02	2.00	0.35	20.36	8.34	000
50555	.....	A	Kidney endoscopy & biopsy ..	6.53	16.01	2.17	0.38	22.92	9.08	000
50557	.....	A	Kidney endoscopy & treatment.	6.62	14.80	2.18	0.39	21.81	9.19	000
50561	.....	A	Kidney endoscopy & treatment.	7.59	14.09	2.51	0.44	22.12	10.54	000
50684	.....	A	Injection for ureter x-ray	0.76	12.61	0.25	0.04	13.41	1.05	000
50690	.....	A	Injection for ureter x-ray	1.16	12.77	0.39	0.06	13.99	1.61	000
50953	.....	A	Endoscopy of ureter	6.24	13.95	2.06	0.37	20.56	8.67	000
50955	.....	A	Endoscopy of ureter	6.75	17.98	2.26	0.38	25.11	9.39	000
50957	.....	A	Ureter endoscopy & treatment.	6.79	13.79	2.24	0.40	20.98	9.43	000
50961	.....	A	Ureter endoscopy & treatment.	6.05	17.61	1.99	0.35	24.01	8.39	000
51010	.....	A	Drainage of bladder	3.53	5.71	2.08	0.23	9.47	5.84	010
51605	.....	A	Preparation for bladder x-ray	0.64	13.63	0.22	0.04	14.31	0.90	000
51610	.....	A	Injection for bladder x-ray	1.05	13.41	0.35	0.05	14.51	1.45	000
51710	.....	A	Change of bladder tube	1.49	3.90	1.30	0.09	5.48	2.88	010
51726	.....	A	Complex cystometrogram	1.71	6.97	6.97	0.15	8.83	8.83	000
51726	TC ..	A	Complex cystometrogram	0.00	6.39	6.39	0.04	6.43	6.43	000
51772	.....	A	Urethra pressure profile	1.61	6.32	6.32	0.16	8.09	8.09	000
51772	TC ..	A	Urethra pressure profile	0.00	5.75	5.75	0.04	5.79	5.79	000
51784	.....	A	Anal/urinary muscle study	1.53	5.25	5.25	0.13	6.91	6.91	000
51784	TC ..	A	Anal/urinary muscle study	0.00	4.73	4.73	0.03	4.76	4.76	000
51785	.....	A	Anal/urinary muscle study	1.53	5.27	5.27	0.12	6.92	6.92	000
51785	TC ..	A	Anal/urinary muscle study	0.00	4.75	4.75	0.03	4.78	4.78	000
51792	.....	A	Urinary reflex study	1.10	5.44	5.44	0.20	6.74	6.74	000
51792	TC ..	A	Urinary reflex study	0.00	5.01	5.01	0.11	5.12	5.12	000
51795	.....	A	Urine voiding pressure study	1.53	6.70	6.70	0.18	8.41	8.41	000
51795	TC ..	A	Urine voiding pressure study	0.00	6.18	6.18	0.08	6.26	6.26	000
51798	.....	A	Us urine capacity measure ...	0.00	0.58	NA	0.07	0.65	NA	XXX
52000	.....	A	Cystoscopy	2.01	4.57	0.78	0.12	6.70	2.91	000
52005	.....	A	Cystoscopy & ureter catheter	2.37	6.38	0.92	0.15	8.90	3.44	000
52010	.....	A	Cystoscopy & duct catheter ..	3.02	7.77	1.15	0.18	10.97	4.35	000
52204	.....	A	Cystoscopy	2.37	5.44	0.93	0.15	7.96	3.45	000
52214	.....	A	Cystoscopy and treatment	3.71	7.24	1.36	0.22	11.17	5.29	000

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-Facility	Facility total	Global
52224	.....	A	Cystoscopy and treatment	3.14	6.12	1.18	0.18	9.44	4.50	000
52265	.....	A	Cystoscopy and treatment	2.94	5.67	1.14	0.18	8.79	4.26	000
52270	.....	A	Cystoscopy & revise urethra	3.37	6.41	1.34	0.20	9.98	4.91	000
52275	.....	A	Cystoscopy & revise urethra	4.70	7.11	1.78	0.28	12.09	6.76	000
52276	.....	A	Cystoscopy and treatment	5.00	8.01	1.90	0.30	13.31	7.20	000
52281	.....	A	Cystoscopy and treatment	2.80	8.05	1.10	0.17	11.02	4.07	000
52282	.....	A	Cystoscopy, implant stent	6.40	13.08	2.29	0.38	19.86	9.07	000
52283	.....	A	Cystoscopy and treatment	3.74	5.86	1.41	0.22	9.82	5.37	000
52285	.....	A	Cystoscopy and treatment	3.61	6.31	1.37	0.22	10.14	5.20	000
52310	.....	A	Cystoscopy and treatment	2.81	4.73	1.05	0.17	7.71	4.03	000
52315	.....	A	Cystoscopy and treatment	5.21	5.75	1.88	0.31	11.27	7.40	000
52317	.....	A	Remove bladder stone	6.72	7.82	2.34	0.40	14.94	9.46	000
52330	.....	A	Cystoscopy and treatment	5.04	17.40	1.80	0.30	22.74	7.14	000
52332	.....	A	Cystoscopy and treatment	2.83	16.40	1.07	0.17	19.40	4.07	000
52647	.....	A	Laser surgery of prostate	10.36	42.87	4.57	0.61	53.84	15.54	090
53025	.....	A	Incision of urethra	1.13	3.69	0.45	0.07	4.89	1.65	000
53040	.....	A	Drainage of urethra abscess	6.40	11.86	7.17	0.41	18.67	13.98	090
53080	.....	A	Drainage of urinary leakage ..	6.29	7.22	7.22	0.42	13.93	13.93	090
53085	.....	A	Drainage of urinary leakage ..	10.27	8.63	8.63	0.67	19.57	19.57	090
53200	.....	A	Biopsy of urethra	2.59	4.76	0.95	0.17	7.52	3.71	000
53265	.....	A	Treatment of urethra lesion ...	3.12	5.77	2.28	0.20	9.09	5.60	010
53270	.....	A	Removal of urethra gland	3.09	5.58	2.52	0.21	8.88	5.82	010
53850	.....	A	Prostatic microwave thermotx	9.45	63.30	4.25	0.56	73.31	14.26	090
53852	.....	A	Prostatic rf thermotx	9.88	52.42	4.43	0.58	62.88	14.89	090
54000	.....	A	Slitting of prepuce	1.54	4.77	1.40	0.10	6.41	3.04	010
54001	.....	A	Slitting of prepuce	2.19	5.36	2.01	0.14	7.69	4.34	010
54015	.....	A	Drain penis lesion	5.32	6.51	3.05	0.33	12.16	8.70	010
54055	.....	A	Destruction, penis lesion(s) ...	1.22	5.59	1.39	0.07	6.88	2.68	010
54060	.....	A	Excision of penis lesion(s)	1.93	4.89	1.56	0.12	6.94	3.61	010
54105	.....	A	Biopy of penis	3.50	5.55	2.07	0.21	9.26	5.78	010
54111	.....	A	Treat penis lesion, graft	13.57	8.38	8.38	0.79	22.74	22.74	090
54115	.....	A	Treatment of penis lesion	6.15	9.53	6.06	0.39	16.07	12.60	090
54120	.....	A	Partial removal of penis	9.97	7.23	7.23	0.60	17.80	17.80	090
54125	.....	A	Removal of penis	13.53	8.43	8.43	0.81	22.77	22.77	090
54130	.....	A	Remove penis & nodes	20.14	10.94	10.94	1.19	32.27	32.27	090
54135	.....	A	Remove penis & nodes	26.36	13.00	13.00	1.58	40.94	40.94	090
54160	.....	A	Circumcision	2.48	4.97	1.75	0.16	7.61	4.39	010
54205	.....	A	Treatment of penis lesion	7.93	6.47	6.47	0.47	14.87	14.87	090
54300	.....	A	Revision of penis	10.41	8.04	8.04	0.54	18.99	18.99	090
54304	.....	A	Revision of penis	12.49	9.25	9.25	0.74	22.48	22.48	090
54308	.....	A	Reconstruction of urethra	11.83	8.82	8.82	0.70	21.35	21.35	090
54312	.....	A	Reconstruction of urethra	13.57	9.87	9.87	0.81	24.25	24.25	090
54324	.....	A	Reconstruction of urethra	16.31	11.06	11.06	1.03	28.40	28.40	090
54328	.....	A	Revise penis/urethra	15.65	10.09	10.09	0.92	26.66	26.66	090
54332	.....	A	Revise penis/urethra	17.08	10.56	10.56	1.01	28.65	28.65	090
54360	.....	A	Penis plastic surgery	11.93	7.85	7.85	0.72	20.50	20.50	090
54430	.....	A	Revision of penis	10.15	7.27	7.27	0.60	18.02	18.02	090
54500	.....	A	Biopsy of testis	1.31	5.46	0.44	0.08	6.85	1.83	000
54700	.....	A	Drainage of scrotum	3.43	7.02	3.06	0.23	10.68	6.72	010
55100	.....	A	Drainage of scrotum abscess	2.13	7.87	3.22	0.15	10.15	5.50	010
55250	.....	A	Removal of sperm duct(s)	3.29	7.70	2.92	0.21	11.20	6.42	090
55450	.....	A	Ligation of sperm duct	4.12	5.98	2.43	0.24	10.34	6.79	010
55700	.....	A	Biopsy of prostate	1.57	3.50	0.73	0.10	5.17	2.40	000
55873	.....	A	Cryoblate prostate	19.47	9.46	9.46	1.02	29.95	29.95	090
58340	.....	A	Catheter for hysterography ...	0.88	12.74	0.32	0.08	13.70	1.28	000
65220	.....	A	Remove foreign body from eye.	0.71	3.50	0.18	0.05	4.26	0.94	000
66740	.....	A	Destruction, ciliary body	4.78	4.84	4.84	0.18	9.80	9.80	090
66821	.....	A	After cataract laser surgery ...	2.35	3.83	3.39	0.10	6.28	5.84	090
66984	.....	A	Cataract surg w/iol, 1 stage ..	10.23	NA	7.65	0.41	NA	18.29	090
67820	.....	A	Revise eyelashes	0.89	1.14	0.38	0.04	2.07	1.31	000
67825	.....	A	Revise eyelashes	1.38	1.62	1.03	0.06	3.06	2.47	010
71275	.....	A	Ct angiography, chest	1.92	12.98	12.98	0.38	15.28	15.28	XXX
71275	TC ..	A	Ct angiography, chest	0.00	12.33	12.33	0.32	12.65	12.65	XXX
72191	.....	A	Ct angiograph, pelv w/o & w/ dye.	1.81	12.59	12.59	0.38	14.78	14.78	XXX
72191	TC ..	A	Ct angiograph, pelv w/o & w/ dye.	0.00	11.97	11.97	0.32	12.29	12.29	XXX
73206	.....	A	Ct angio upr extrm w/o & w/ dye.	1.81	11.54	11.54	0.38	13.73	13.73	XXX
73206	TC ..	A	Ct angio upr extrm w/o & w/ dye.	0.00	10.92	10.92	0.32	11.24	11.24	XXX

CPT 1/ HCPCS 2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-Facility	Facility total	Global
73706	.....	A	Ct angio lwr extr w/o & w/dye	1.90	11.57	11.57	0.38	13.85	13.85	XXX
73706	TC ..	A	Ct angio lwr extr w/o & w/dye	0.00	10.92	10.92	0.32	11.24	11.24	XXX
74175	.....	A	Ct angio abdom w/o & w/dye	1.90	12.62	12.62	0.38	14.90	14.90	XXX
74175	TC ..	A	Ct angio abdom w/o & w/dye	0.00	11.97	11.97	0.32	12.29	12.29	XXX
76519	.....	A	Echo exam of eye	0.54	1.93	NA	0.07	2.54	NA	XXX
76519	TC ..	A	Echo exam of eye	0.00	1.68	NA	0.06	1.74	NA	XXX
88141	.....	A	Cytopath, c/v, interpret	0.42	0.19	0.19	0.01	0.62	0.62	XXX
91122	.....	A	Anal pressure record	1.77	4.55	4.55	0.17	6.49	6.49	000
91122	TC ..	A	Anal pressure record	0.00	3.93	3.93	0.07	4.00	4.00	000
92014	.....	A	Eye exam & treatment	1.10	1.37	0.48	0.02	2.49	1.60	XXX
92081	.....	A	Visual field examination(s)	0.36	0.89	NA	0.02	1.27	NA	XXX
92081	TC ..		Visual field examination(s)	0.00	0.73	NA	0.01	0.74	NA	XXX
92083	.....	A	Visual field examination(s)	0.50	1.37	NA	0.02	1.89	NA	XXX
92083	TC ..		Visual field examination(s)	0.00	1.14	NA	0.01	1.15	NA	XXX
92135	.....		Opthalmic dx imaging	0.35	1.32	NA	0.02	1.69	NA	XXX
92135	TC ..		Opthalmic dx imaging	0.00	1.16	NA	0.01	1.17	NA	XXX
92235	.....		Eye exam with photos	0.81	2.68	NA	0.07	3.56	NA	XXX
92235	TC ..		Eye exam with photos	0.00	2.31	NA	0.05	2.36	NA	XXX
92250	.....		Eye exam with photos	0.44	1.54	NA	0.02	2.00	NA	XXX
92250	TC ..		Eye exam with photos	0.00	1.35	NA	0.01	1.26	NA	XXX
93012	.....	A	Transmission of ecg	0.00	5.99	NA	0.15	6.14	NA	XXX
94014	.....	A	Patient recorded spirometry ..	0.52	0.98	NA	0.03	1.53	NA	XXX
94015	.....	A	Patient recorded spirometry ..	0.00	0.81	NA	0.01	0.82	NA	XXX
G0124 ...	.....	A	Screen c/v thin layer by MD	0.42	0.19	0.19	0.01	0.62	0.62	XXX
G0141 ...	.....	A	Scr c/v cyto, autosys and MD	0.42	0.19	0.19	0.01	0.62	0.62	XXX
G0275 ...	.....	A	Renal angio, cardiac cath	0.25	0.10	0.10	0.01	0.36	0.36	ZZZ
G0278 ...	.....	A	Iliac art angio, cardiac cath ...	0.25	0.10	0.10	0.01	0.36	0.36	ZZZ
G0281 ...	.....	A	Elec stim unattend for press	0.18	0.16	0.16	0.01	0.35	0.35	XXX
G0283 ...	.....	A	Elec stim other than wound ..	0.18	0.16	0.16	0.01	0.35	0.35	XXX
G0289 ...	.....	A	Arthro, loose body + chondro	1.48	0.58	0.58	0.27	2.33	2.33	ZZZ
P3001	.....	A	Screening pap smear by phys.	0.42	0.19	0.19	0.01	0.62	0.62	XXX

17. In the table of addendum D the following carrier numbers are corrected as follows:

ADDENDUM D

[Corrected]

Carrier no.	Locality no.	Locality name	Work	Practice expense	Malpractice
00883	00	OHIO	0.988	0.944	0.957
00884	16	WEST VIRGINIA	0.963	0.850	1.378

Addendum E [Corrected]

18. In Addendum E, the following CPT codes and their descriptors are added:

PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH-LANGUAGE PATHOLOGY

92597 ..... Oral speech device eval

PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES

90740 ..... Hepb vacc, ill pat 3 dose im
90743 ..... Hep b vacc, adol, 2 dose, im
90744 ..... Hepb vacc ped/adol 3 dose im
90746 ..... Hep b vaccine, adult, im
90747 ..... Hepb vacc, ill pat 4 dose im

19. In Addendum E, the following CPT and HCPCS codes and their descriptors are removed:

CLINICAL LABORATORY SERVICES

P2031 ..... Hair analysis
P7001 ..... Culture bacterial urine

PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH-LANGUAGE PATHOLOGY

0019T ..... Extracorp shock wave tx, ms

PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES

90748 ..... Hep b/hib vaccine, im
Q3021 ..... Ped hepatitis b vaccine inj
Q3022 ..... Hepatitis b vaccine adult ds
Q3023 ..... Injection hepatitis Bvaccine

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. Therefore, we find good cause to waive notice and comment procedures.

Dated: April 24, 2003.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 03–11747 Filed 5–29–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 416

[CMS–1885–CN]

RIN 0938–AM02

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003; Final Rule Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on March 28, 2003 entitled ''Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures Effective July 1, 2003; Final Rule.''

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–7236 of March 28, 2003 (68 FR 15268), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published March 28, 2003. Accordingly, the corrections are effective March 28, 2003.

The errors involve the phone number of the agency contact and 5 HCPCS codes: 21365, 36819, 42415, 52355 and 54512. These codes either have incorrect payment groups or incorrect status indicators.

II. Correction of Errors

In FR Doc. 03–7236 of March 28, 2003 (68 FR 15268), make the following corrections:

1. On page 15268, in the 2nd column, the **FOR FURTHER INFORMATION CONTACT** section the phone number is corrected as follows: 410–786–4645.

2. On page 15280, HCPCS code 21365, the 2nd column, the status indicator is corrected to read as follows: ''D''.

3. On page 15296, HCPCS code 36819 is corrected as follows:

a. The payment group in the 4th column is ''3''.

b. The payment amount in the 5th column is ''$510''.

4. On page 15298, HCPCS code 42415 is corrected as follows:

a. The payment group in the 4th column is ''7''.

b. The payment amount in the 5th column is ''$995''.

5. On page 15303, HCPCS code 52355, the 2nd column, the status indicator is corrected to read as follows: ''A*''.

6. On page 15304, HCPCS code 54512 is corrected as follows:

a. The payment group in the 4th column is ''2''.

b. The payment amount in the 5th column is ''$446''.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the rule. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 12, 2003.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 03–13182 Filed 5–29–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74, and 78

[ET Docket No. 98–142; FCC 03–69]

Mobile-Satellite Service Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies two petitions for reconsideration of the *Report and Order* (*''R&O''*), which allocated spectrum for certain satellite ''feeder links'' and provided rules for sharing these feeder links with certain incumbent terrestrial operations. These petitions, filed by Globalstar, L.P. and Globalstar USA, LLC (''Globalstar'') and by the Society of Broadcast Engineers, Inc. (''SBE''), request reconsideration of the Commission's decisions in the *R&O* with respect to the 6700–7075 MHz (''7 GHz'') band. Globalstar requests that the 6700–7025 MHz Non-Geostationary Satellite Orbit Mobile-Satellite Service (''NGSO MSS'') feeder downlink band in the Fixed Satellite Service (''FSS'') be extended from 6700–7025 MHz to 6700–7075 MHz, and SBE requests various rule changes pertaining to share use of the 7 GHz band between television broadcast auxiliary service (''TV BAS'') and NGSO MSS.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452, TTY (202) 418–2989, e-mail *rsmall@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 98–142, FCC 03–69, adopted March 27, 2003 and released April 2, 2003. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Memorandum Opinion and Order

Globalstar Petition for Reconsideration

1. We find Globalstar's concerns regarding the possibility of NGSO MSS systems being constrained by a shortage of feeder downlink spectrum to be unfounded for the reasonably foreseeable future. Globalstar's NGSO MSS system in the 1610–1626.5/2483.5–2500 MHz bands (''Big LEO'' system) is authorized to use the 6875–7055 MHz band for feeder downlinks. At the time Globalstar filed its petition, its feeder downlink band was potentially subject to significant sharing with other NGSO MSS systems that were authorized overlapping feeder downlink spectrum. The need to share the majority of that band with those NGSO MSS systems in the foreseeable future has been reduced as a result of license cancellations. Thus, Globalstar's Big LEO system, which previously faced the immediate need to share the 6875–6975 MHz band with three competing NGSO MSS systems, is currently the only feeder downlink user of that 100 megahertz of spectrum. In addition, Globalstar will

have the option of using the 6975–7025 MHz band on a shared basis with ICO Global Communications (Holdings) Ltd.'s (''ICO's'') NGSO MSS system in the 1990–2025/2165–2200 MHz bands (''2 GHz MSS'' system), along with Globalstar's grandfathered use of the 7025–7055 MHz band from its two currently-operational gateways. Under these circumstances, we affirm our statement in the *R&O,* 67 FR 17288, April 10, 2002, that ''325 megahertz of primary spectrum, along with 50 megahertz of primary spectrum limited to grandfathered systems, will accommodate the existing need for feeder downlink spectrum.''

2. Thus, we deny Globalstar's reconsideration petition to allocate the 7025–7075 MHz band to FSS downlink operations and its request for use of the 7025–7075 MHz band for any purpose other than gateway use by Globalstar's two existing earth stations, particularly given the availability of spectrum allocated for gateway use below 7025 MHz. We further find no need to permit ICO's 2 GHz MSS system to use the 7025–7075 MHz band for any purpose other than gateway use by its one existing earth station.

SBE Petition for Reconsideration

3. In the *R&O,* we concluded that NGSO MSS gateway earth stations could share part of the 7 GHz band with TV BAS operations because such earth stations would be limited in number and because coordination between those co-primary operations should ensure successful spectrum sharing. The *R&O* noted that parts 74 and 78 of the Commission's rules, which govern TV BAS, do not have coordination procedures for sharing with satellite operations, but concluded that parts 25 and 101 coordination procedures would serve to protect such earth stations from fixed BAS operations as an interim measure until uniform coordination procedures could be adopted in a separate proceeding. The *R&O* further noted that, while existing coordination procedures are inadequate to address NGSO MSS gateway earth station sharing with mobile TV pickup (''TVPU'') BAS operations, sharing is nonetheless possible because gateway earth station and TVPU use of the 7 GHz band are both limited, and because TVPU stations can use two BAS channels that are not overlapped by the new NGSO MSS allocation. Therefore, the *R&O* placed *ad hoc* coordination requirements on NGSO MSS gateway earth stations with both fixed and mobile TV BAS operations, until completion of a Commission proceeding to establish coordination rules specific to TV BAS/gateway sharing.

4. In seeking reconsideration, SBE requests that the Commission: (1) Require use of the part 101 frequency coordination protocol by a 7 GHz TV BAS fixed station with an NGSO MSS gateway earth station only if that TV BAS station is located within 145 kilometers (''km'') of the earth station; (2) require 7 GHz TV BAS stations to protect only the portion of the 7 GHz feeder downlink band that is being used by an NGSO MSS provider at the time of frequency coordination; and (3) establish the release date of the *R&O* (February 7, 2002) as the benchmark date to grandfather 7 GHz TVPU stations; *i.e.*, provide that TVPU stations authorized by February 7, 2002 would not be required to protect the three incumbent NGSO MSS gateway earth stations. SBE also challenges the *R&O*'s Final Regulatory Flexibility Certification (''Certification'').

5. *Coordination Distance.* The record indicates that different coordination distances are required to protect each existing NGSO MSS gateway earth station from harmful interference caused by 7 GHz TV BAS fixed stations. Further, we agree with ICO's assertion that the necessary coordination distance between TV BAS stations and earth stations depends on a number of parameters particular to each earth station. According to ICO, these include rain climatic zone, the gain of the earth station antenna toward the horizon, and the maximum permissible interference that the earth station will tolerate for a given percentage of the time. To specify in this proceeding the same coordination distance for existing and future earth stations without examining the particulars of each earth station would be arbitrary and could lead to instances of inadequate interference protection or unnecessarily large coordination distances. Indeed, we intend to explore further issues relating to the appropriate coordination distances and procedures for TV BAS stations and NGSO MSS gateway earth stations in a forthcoming *Notice of Proposed Rule Making* in ET Docket No. 98–206. Accordingly, only as an interim measure pending a final decision in our forthcoming proceeding, we are specifying for 7 GHz TV BAS fixed stations coordination with the three existing NGSO MSS gateway earth stations, but do so using the maximum coordination distances found to be required by the Comsearch studies presented in the record of this proceeding; *i.e.*, we specify a maximum coordination distance of 145 km from Globalstar's Clifton, TX earth station, a maximum coordination distance of 519 km from Globalstar's Finca Pascual, PR earth station, and a maximum coordination distance of 319 km from ICO's Brewster, WA earth station.

6. *Frequencies Protected.* We find that fixed TV BAS and mobile TV BAS (TVPU) require distinct considerations. As pointed out by ICO, the Commission recently addressed the issue of protecting earth stations from potential harmful interference caused by fixed TV BAS use by deciding that such protection should be based on the earth station spectrum assignment, rather than the spectrum actually used by earth stations. In IB Docket No. 00–203, the Fixed Wireless Communications Coalition (''FWCC'') argued that the Commission was according FSS earth stations preferential access to several bands, including 6425–7125 MHz, that are shared with terrestrial fixed services. Specifically, FWCC argued that interference protection to FSS earth stations should be based upon FSS spectrum use, just as interference protection to fixed services is based upon fixed spectrum use. However, the Commission denied FWCC's petition, finding that fixed and satellite services have significantly different requirements for access to the spectrum in order to meet their business needs, and further finding that there was insufficient evidence that terrestrial fixed users have been harmed by frequency sharing with the FSS. We find no need to revisit that recent decision, as we see no evidence that circumstances have changed since that time. Accordingly, regarding fixed TV BAS use, we deny SBE's request that coordination and protection of NGSO MSS gateway earth stations be based upon current spectrum use.

7. With regard to protecting the entire NGSO MSS gateway earth station spectrum assignment from potential harmful interference caused by mobile TV BAS use, rather than the spectrum actually used by the earth stations, we find it necessary that mobile TV BAS users protect the entire NGSO MSS gateway earth station spectrum assignment as an interim measure, pending the outcome of the forthcoming Notice of Proposed Rule Making referenced in paragraph 5, herein. We note that certain characteristics of mobile TV BAS may permit some flexibility in coordination and interference protection. Specifically, we note that mobile TV BAS is often used to cover ''breaking news'' on a short-term, temporary basis. While a NGSO MSS gateway earth station licensee may resist giving up a portion of its authorized spectrum for a new

permanent TV BAS operation, we expect that the NGSO MSS gateway earth station licensee will be able to accommodate a temporary mobile TV BAS operation if it is not operating across the whole authorized bandwidth at the time of the request. As long as the temporary mobile TV BAS does not cause interference to the gateway earth station, TV BAS use would not constrain the growth and long-term functionality of the gateway earth station. Accordingly, regarding mobile BAS use, we deny here SBE's request that coordination and protection of NGSO MSS gateway earth stations be based on current spectrum use, but we will explore whether, and under what circumstances, temporary mobile TV BAS use of the 7 GHz band within interference range of such earth stations could be permitted in the *Notice of Proposed Rulemaking* referenced in paragraph 5, herein.

8. *Grandfathered TVPU.* Grant of SBE's request to permit TVPU stations authorized after Globalstar's and ICO's three existing NGSO MSS gateway earth stations to operate without regard to harmful interference to those earth stations would disregard the Commission's long-standing policy that authorized and coordinated stations have rights to protection from subsequently authorized stations of the same status (primary or secondary). SBE's request appears to be based on the premise that, because Globalstar's and ICO's NGSO MSS feeder downlink spectrum assignments were conditioned on the outcome of the allocation decision in this proceeding, their earth stations' interference protection rights do not commence until the date of release of the *R&O.* However, the waiver grants to Globalstar and ICO authorized primary feeder downlink use of the 6875–7055 MHz and 6975–7075 MHz bands, respectively, as of the dates of the waivers, which are November 18, 1996 and July 17, 2001, respectively. Subsequently, Globalstar's and ICO's earth stations were individually authorized. The *R&O* allocated the 6700–7025 MHz band for NGSO MSS feeder downlinks and grandfathered the three existing Globalstar and ICO earth stations in the 7025–7075 MHz band, including facilities in the process of being built, but did not modify the waiver grants or earth station authorizations. Accordingly, those earth stations have maintained primary status since the grant of the waivers. Therefore, we deny SBE's petition for reconsideration with respect to this issue.

9. *Final Regulatory Flexibility Certification.* We find that SBE has presented no evidence to contradict our finding that there would be a *de minimis* burden on TV BAS stations in the 7 GHz band. SBE simply cites the number of TV translator, LPTV, Class A TV, and full service TV stations within 145 km of Globalstar's and ICO's three existing NGSO MSS gateway earth stations that *might* use 7 GHz TV BAS stations that *might* be subject to protecting the three earth stations from harmful interference. However, SBE fails to recognize that only those 7 GHz TV BAS stations located in relatively close proximity to an NGSO MSS gateway earth station and that were authorized *after* the earth station would have to bear the cost of frequency coordination with the earth station, nor does SBE recognize that new TV BAS stations must already coordinate with *all* existing primary licensees in the band, including other TV BAS stations and FSS uplinks. SBE does not estimate the number of 7 GHz TV BAS stations likely to be affected by coordination with existing or future NGSO MSS downlinks, nor does it estimate the cost burden on the affected TV BAS stations attributable to such coordination.

10. Because the 7 GHz FSS downlink allocation is limited to serving the feeder link needs of NGSO MSS systems, the number of gateway earth stations constructed will be very small and most likely will be deployed away from major populated areas where the 7 GHz TV BAS band is used most. Further, it is incumbent upon the new entrant in any shared band to perform coordination, so that a coordination burden on TV BAS stations located in the vicinity of an existing NGSO MSS gateway earth station would affect only new TV BAS stations, and SBE has not demonstrated that we should expect a substantial number of small entities to have new TV BAS stations. Moreover, because of the existing co-primary FSS uplink allocation in the 7 GHz band, any new TV BAS station would already have to coordinate with FSS operations and bear the associated costs. Therefore, new 7 GHz TV BAS stations locating near an NGSO MSS gateway earth station will not be confronted with a significant additional satellite coordination requirement as a result of our action.

11. We also note that, typically, a frequency coordinator will charge a fee to a new TV BAS station based on the number of existing station links that must be coordinated. It is unclear how much coordination with an NGSO MSS gateway earth station would add to that cost, but in reply comments in ET Docket No. 01–75, Viacom, Inc. indicates that a single coordination costs no more than $1,000 per frequency to a BAS station. This relatively low cost combined with the limiting factors discussed above leads us to affirm our conclusion that the impact of our action is *de minimis* on TV BAS operations as a whole.

12. In summary, we find that only a relatively small number of TV BAS stations in the 7 GHz band will be affected by the *R&O's* decision to authorize NGSO MSS feeder downlink use of that band because only a new 7 GHz TV BAS station locating in the vicinity of an NGSO MSS gateway earth station will have to protect the earth station from harmful interference attributable to the operation of the new TV BAS station. A 7 GHz TV BAS station authorized prior to the authorization of an NGSO MSS gateway earth station will not be affected. The majority of TV BAS stations are, or will be, located at a sufficient distance from the small number of NGSO MSS gateway earth stations to have no additional burden. Even with respect to the relatively limited number of 7 GHz TV BAS stations in the vicinity of an NGSO MSS gateway earth station authorized, or that will be authorized, subsequent to the authorization of that earth station, it is unclear whether coordination costs attributable to the existence of the earth station will be significant relative to coordination costs attributable to the existence of other authorized 7 GHz stations. Finally, new BAS stations locating in an NGSO MSS gateway earth station area will not be confronted with an unprecedented satellite coordination requirement. Taking into account all of these factors, we find that the *R&O's* decision authorizing NGSO MSS gateway earth stations in the 7 GHz band does not impose on TV BAS stations as a whole a coordination burden that will be more than *de minimis*, as stated in the Certification.

13. Accordingly, we are persuaded by only one of SBE's contentions set forth in its petition for reconsideration—namely, that 7 GHz TV BAS licensees located in the vicinity of Globalstar's Clifton, TX NGSO MSS gateway earth station need to coordinate with that earth station only if they are located within 145-km of it. That coordination distance, and the other coordination distances specified in paragraph 5, herein, will be used as an interim measure pending a final decision in the forthcoming proceeding. In all other respects, we deny SBE's petition for reconsideration.

Ordering Clauses

14. Pursuant to sections 1, 4(i), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g), and 303(r), this *Memorandum Opinion and Order* is adopted.

15. The petitions for reconsideration of the *Report and Order* in the proceeding, filed by Globalstar, L.P. and Globalstar USA, LLC and by the Society of Broadcast Engineers, Inc., *are denied,* except to the extent that SBE's petition is granted with respect to the coordination distances.

16. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Memorandum Opinion and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13513 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177 and 178

[Docket No. RSPA–01–10533 (HM–218A)]

RIN 2137–AD44

Transportation of Hazardous Materials; Unloading of Intermodal (IM) and UN Portable Tanks on Transport Vehicles

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of IM and UN portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.

DATES: *Effective Date:* June 30, 2003.

Voluntary Compliance Date: RSPA is authorizing immediate voluntary compliance, however, RSPA may further revise this rule as a result of appeals that may be received.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone, (202) 366–8553, or Philip Olson, Office of Hazardous Materials Technology, (202) 366–4504, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On February 22, 2002, the Research and Special Programs Administration (''RSPA'' or ''we'') published a notice of proposed rulemaking (NPRM) (67 FR 8220) under Docket HM–218A. The NPRM proposed to permit, for an interim period and subject to certain conditions, the unloading of intermodal (IM) portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets.

The NPRM was based on the appeal of a denial of a petition for reconsideration and a petition for rulemaking regarding the provisions in § 177.834(o) of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), permitting an IM portable tank to be unloaded while it remains on a transport vehicle. The petitions were in response to a final rule under Docket RSPA–97–2905 (HM–166Y; 63 FR 37454; July 10, 1998) which incorporated miscellaneous changes into the HMR based on petitions for rulemaking and our own initiative. The effective date of the final rule was October 1, 1998. Among other provisions, the HM–166Y final rule allows an IM portable tank transporting a liquid hazardous material that is flammable, pyrophoric, oxidizing, or toxic, to be unloaded while remaining on a transport vehicle with the power unit attached, provided the outlet requirements in 49 CFR 178.345–11 and the attendance requirements in 49 CFR 177.834(i) are met. Section 178.345–11 includes requirements for loading/unloading outlets on cargo tanks to be equipped with self-closing systems with remote means of closure capable of thermal activation at temperatures not exceeding 250 °F. Section 177.834(i) includes requirements for ensuring that cargo tanks are attended by a qualified person during loading and unloading. The intent of the unloading provision in the HM–166Y final rule was to provide regulatory relief for operators of IM portable tanks equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets (known as ''fusible links''). The outlet requirement provides an automatic means to shut down unloading in a fire situation when an operator is not able to manually activate the closure.

In response to industry concerns about the need for additional time to equip portable tanks with fusible links, an NPRM in this docket was published on February 22, 2002. The NPRM proposed to permit IM portable tanks not currently equipped with fusible links to be unloaded while remaining on a transport vehicle under certain conditions. Specifically, we proposed that the shipper and the carrier would share responsibility for verifying that the consignee's facility conforms to the Department of Labor's Occupational Safety and Health Administration's (OSHA) fire suppression and emergency shutdown requirements, OSHA's and the Environmental Protection Agency's (EPA) emergency response planning requirements, and an emergency discharge control procedure. Alternatively, conformance to equivalent non-federal requirements would be authorized. The NPRM proposed to permit such unloading operations until October 1, 2003, providing a total of five years from the October 1, 1998 effective date of the July 10, 1998 final rule to equip the portable tanks. Additionally, the shipper and the carrier would be responsible for compliance with the attendance requirements in § 177.834(o), ensuring that public access is denied during unloading, ensuring that persons performing unloading functions are trained in handling emergencies, and ensuring that the operator of the vehicle has determined that all of the above conditions have been met prior to unloading.

II. Discussion of Comments

We received comments to the February 22, 2002 NPRM in this docket from the Dangerous Goods Advisory Council (DGAC), the American Chemistry Council (the Council), Air Products and Chemicals, Inc. (Air Products), and Merck & Co., Inc.

DGAC, the Council, and Air Products request that we authorize the proposed interim unloading conditions as a permanent option to retrofitting IM portable tanks. These commenters believe that we should be in alignment with international standards and that a domestic-only requirement would cause ''difficult logistic problems for foreign shippers trying to serve the U.S. market.'' DGAC and the Council ask whether foreign shippers would ''be compelled to retrofit part of their fleets

that would be reserved for the U.S. market.'' They also state that the retrofitting requirement may create confusion for foreign markets not familiar with U.S. operations and maintenance. DGAC and the Council state that if the interim provisions allow an equivalent level of safety, it would be ''far simpler'' and ''more efficient'' to authorize the interim provisions on a permanent basis. Air Products adds that ''safety can be achieved'' by either the retrofitting requirement or by adopting the proposed interim conditions on a permanent basis.

As stated in the HM–218A NPRM and the June 21, 2001 final rule published under Docket HM–215D (66 FR 33316), we continue to believe that if a portable tank is to be unloaded in the same manner as a cargo tank, it should be equipped with the same emergency shutdown devices required for cargo tanks. To accommodate industry concerns about the amount of time required for retrofits, the NPRM proposed alternative unloading conditions for an interim period for IM portable tanks not currently equipped with a thermal means of remote activation of the internal self-closing stop-valve fitted on bottom discharge outlets. We never intended to make the alternative unloading procedures permanent because we do not believe that the alternative unloading procedures provide the same level of safety as a fusible link.

DGAC, the Council, and Air Products do not dispute the need for extra safety measures, but now assert that the interim provisions provide an *equivalent* level of safety to retrofitting and should be allowed as a permanent alternative to retrofitting. We disagree. In the February 22, 2002 NPRM, we stated that the conditions, as discussed later in this preamble, provide an *acceptable* level of safety during an interim period by reducing the possibility of fire and release of hazardous materials during the unloading of IM portable tanks. We do not believe that the conditions provide an *equivalent* level of safety on a long-term or permanent basis. A fusible link operates to shut down an unloading operation automatically, without the necessity for human intervention. The alternative procedures provided in the NPRM depend on human intervention to handle a fire during an unloading operation. While this is acceptable in the short term, we do not consider that the safety level provided is equivalent to that achieved by an automatic means to shut down unloading.

With respect to the comments that the requirement should be in alignment with international standards, we agree that, generally, harmonization of domestic and international transportation requirements is a beneficial and worthy objective. However, as with all safety regulations, we review and consider each amendment to the international standards on its own merit. There are a number of instances where we impose more stringent requirements for the domestic transportation of hazardous materials than the international requirements. Our goal is to harmonize without sacrificing the current HMR level of safety.

In the HM–215D final rule, we estimated that the cost of installing a fusible link at the time an IM portable tank is manufactured is approximately $40.00 to $70.00 per portable tank; based on information provided by tank, tank valve, and component manufacturers. Installation at the time of manufacture avoids downstream retrofitting costs, costs associated with shipping delays, and logistical problems at a later date. In previous discussions, DGAC and the Tank Container Association stated that retrofitting portable tanks would cost approximately $200.00 to $250.00 per portable tank. We reiterate our earlier statements that, on the basis of these costs, it makes economic sense to install the devices at the time of manufacture.

DGAC and the Council ask whether we intend to compel foreign shippers to ''retrofit part of their fleets that would be reserved for the U.S. market.'' Just as U.S. exporters of hazardous materials are responsible for compliance with international and individual country requirements regarding hazardous materials transportation, foreign shippers are responsible for compliance with U.S. variations from international standards. If foreign shippers choose to operate in the U.S., they must comply with the HMR.

DGAC, the Council, and Air Products also oppose requiring shippers and carriers to share the responsibility for ensuring that unloading facilities are in compliance with OSHA and EPA regulations. They state that doing so will:

—Prompt differing interpretations of the requirements for the facility, especially when multiple shippers and carriers serve a particular facility.
—Pose problems with shippers and carriers who are unlikely to be aware of state or local requirements, other than OSHA's.
—Pose conformance problems because foreign shippers would have no means to assure compliance, leaving the problem solely to the carrier.

The commenters believe that we should require the consignee to be the responsible party.

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) requires the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5103(b). Those regulations apply to persons transporting hazardous materials in commerce, persons who cause hazardous materials to be transported in commerce, and persons who manufacture and maintain packagings represented as qualified for use in transporting hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A). Thus, the HMR generally do not prescribe regulations for facilities to which hazardous materials are consigned; rather, the HMR apply to persons who prepare hazardous materials for transportation or who transport hazardous materials in commerce. For this reason, we are requiring a shipper and/or a carrier, rather than a consignee, to assure compliance with the conditions established for unloading a portable tank without removing it from the transport vehicle. Persons interested in a more detailed discussion of the applicability of the Federal hazardous materials transportation law and the HMR to specific functions and activities should review the NPRM published under Docket HM–223 on June 14, 2001 (66 FR 32420).

In addition, DGAC asks whether shippers and carriers would be held partly responsible should a problem occur during unloading, and fire or shutdown capabilities prove less than adequate. Any person, domestic or foreign, engaged in an activity regulated by federal, state or local requirements must understand and comply with all applicable regulations. Shippers and carriers engaged in the transportation of hazardous materials in commerce must be trained in the applicable requirements of the HMR and, additionally, are responsible for all applicable federal, state or local requirements. If an incident occurs when ''fire or shutdown capabilities prove less than adequate,'' upon investigation, it may be determined that either or both parties are responsible. We do not consider it burdensome for shippers and carriers to contact facilities to determine whether the applicable OSHA and EPA requirements have been met. The requirements in the HM–166Y final rule granted relief from the longstanding prohibitions in the HMR against unloading portable tanks while

on transport vehicles with the power units attached. The relief was intended for operators of portable tanks equipped with fusible links carrying flammable, pyrophoric, oxidizing, or toxic liquid hazardous materials. This final rule grants further relief by permitting such unloading for an interim period when portable tanks with bottom outlets are not equipped with fusible links. Nevertheless, operators retain the option to equip their portable tanks with the fusible links.

The Council also suggests the requirement for a portable tank to be contained entirely within the horizontal outline of the vehicle, without overhang or projection of any part of the tank assembly, when it is loaded onto a highway or rail transport vehicle is more appropriately addressed as a vehicle size requirement under the Federal Highway Administration (FHWA) regulations applicable to vehicle size and weight (23 CFR, Section 658). We do not agree. The portable tank is not part of the transport vehicle and, therefore, is not covered by FHWA requirements concerning vehicle size. The manner in which a portable tank is loaded onto a transport vehicle prior to its transportation in commerce will have a direct impact on the safety of hazardous materials during transportation and, thus, should be regulated under the HMR. Further, this was not a proposed requirement. This has been a requirement since we adopted the IM portable tank standards. The requirement is currently in § 173.32(g)(1) and, prior to the HM–215D final rule, was located in § 173.32c(m).

A fourth commenter, Merck & Co., supports the limited time extension; however, Merck requests regulatory text clarifications. Merck and Co. asks us to clarify that the retrofitting requirement applies to subsidiary, as well as primary, hazards of flammable, pyrophoric, oxidizing and toxic hazardous materials. In this final rule, we are clarifying that the retrofitting requirement applies to primary and subsidiary hazards for liquid materials of Class 3 (flammable), PG I and II, and PG III with a flash point less than 100 °F (38 °C); Division 5.1 (oxidizer), PG I and II; and Division 6.1 (poisonous/toxic), PG I and II. Application of the retrofitting requirement is identified in the appropriate proper shipping name entry in the § 172.101 Table by assignment of a T Code in Column (7) authorizing a bottom outlet when a packaging authorization section (§ 173.242 or § 173.243) in Column (8C) contains a requirement specifying that the tank's bottom discharge outlet must be equipped with an internal shut-off device in conformance with § 178.275(d)(3). Consistent with cargo tank exceptions, certain low hazard liquids assigned to the packaging authorization section, § 173.241, are excepted from the retrofitting requirement. In addition, we removed pyrophoric hazardous materials from the retrofitting requirement because bottom openings are prohibited on portable tanks transporting these materials. We are making the clarifications in §§ 173.32(h)(3), 177.834(o)(3) and 178.275(d)(3)(iv), as well as the packaging authorization sections §§ 173.242(c)(4) and 173.243(c).

We are also revising certain paragraphs, as noted in the *Section-by-Section Review* portion of this preamble, to clarify that UN, as well as IM, portable tanks are subject to the retrofitting requirement. In the HM–215D final rule published June 21, 2001, we applied the requirement to UN portable tanks.

Finally, due to the delay in issuing this final rule, we are extending the proposed October 1, 2003 interim date to October 1, 2004.

Based on the above discussion, we are authorizing the unloading without removal from a transport vehicle of IM and UN portable tanks transporting certain liquid hazardous materials and not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets until September 30, 2004, provided certain conditions are met. This date provides manufacturers, lessors, and users of the affected portable tanks a total of six years from the October 1, 1998 effective date of the July 10, 1998 final rule to equip the tanks with a thermal means for remotely activating bottom discharge outlets. Because these tanks undergo periodic inspection every five years, the date also provides the opportunity for the retrofitting to be done at the time of the periodic inspection, thereby minimizing cost impacts. Many of these tanks should already be equipped with thermal links. On and after October 1, 2004, an affected IM and UN portable tank, with a bottom outlet, may not be unloaded while remaining on a transport vehicle with the power unit attached unless it fully conforms to the outlet requirements in § 178.275(d)(3).

III. Section-by-Section Review

Part 171

Section 171.12 and 171.12a. We are adding a new paragraph § 171.12(b)(21) and § 171.12a(b)(20) to clarify that UN and IM portable tanks unloaded while remaining on a transport vehicle with the motive power unit attached must meet the requirements in § 177.834(o).

Part 173

Section 173.32. In § 173.32, we are revising paragraph (g)(1) by removing the reference to § 177.834(i)(2). The referenced section, which addresses attendance and unloading requirements, is no longer necessary with the adoption of § 173.32(h)(3). Section 173.32(h)(3) references a more appropriate section for portable tanks; § 177.834(o). New paragraph (h)(3) alerts shippers of their shared responsibility for ensuring that portable tanks not conforming to the requirements in § 178.275(d)(3) are unloaded only at facilities conforming to the applicable OSHA and EPA requirements. The paragraph also clarifies which hazardous materials are subject to these requirements.

Sections 173.242 and 173.243. We are adding a new § 173.242(c)(4) and adding a sentence to § 173.243(c) to clarify when the retrofitting requirement applies to IM and UN portable tanks.

Part 177

Section 177.834. We are revising § 177.834(o) to permit, until October 1, 2004, the unloading of IM and UN portable tanks not meeting the outlet requirements in § 178.275(d)(3), provided certain unloading conditions are met. The shipper and the carrier share responsibility for verifying that the consignee's facility meets certain conditions and that the following requirements are met:

(1) The facility at which the portable tank is to be unloaded must have systems in place that conform to: Applicable OSHA fire suppression requirements in 29 CFR 1910.106(e); the emergency shutdown requirements in 29 CFR 1910.119(f); and OSHA's and EPA's emergency response planning requirements in 29 CFR 1910.119(f) and 40 CFR part 68. In addition, the facility must have an emergency discharge control procedure in place applicable to unloading operations, including instructions for handling emergencies that may occur during the unloading operation. Alternatively, equivalent or more stringent non-federal requirements are authorized.

(2) There must be no public access to the unloading area during the unloading process.

(3) The attendance requirements in § 177.834(o) must be met.

(4) Prior to unloading, the operator of the vehicle on which the portable tank is transported must ascertain the conditions in § 177.834(o) are met.

(5) Persons performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

We are also changing the outlet section reference for portable tanks from § 178.345–11 to § 178.275(d)(3). In the HM–215D final rule, we added § 178.275(d)(3) to address the requirements for equipping UN portable tanks with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Although the two sections contain the same requirements, the addition of § 178.275(d)(3) into the HMR now makes it a more appropriate reference because it is specific to portable tank requirements.

Finally, we are revising § 177.834(o) to clarify that the requirement for a thermal means of remote activation of bottom discharge outlets applies to IM and UN portable tanks containing liquid hazardous materials of Class 3 (flammable), PG I and II, and PG III with a flash point less than 100 °F (38 °C); Division 5.1 (oxidizer), PG I and II; and Class 6.1 (poisonous/toxic), PG I and II, when the appropriate proper shipping name entry in the § 172.101 table is assigned a T Code in Column (7) authorizing a bottom outlet and a packaging authorization section (§ 173.242 or § 173.243) in Column (8C) requiring internal valves in conformance with § 178.275(d)(3). In this way, we are limiting the applicability to materials posing a risk of fire or acute health and environmental risks. This revision is consistent with the current requirements located in §§ 178.345–11 and 178.275.

Part 178

Section 178.275. We are revising paragraph (d)(3) to clarify when IM and UN portable tanks are subject to the retrofitting requirements.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the alternative interim provisions in this final rule include providing the industry additional time to come into compliance with existing regulatory requirements for those portable tanks intended to be unloaded in the same manner as cargo tanks. There is no requirement in the current regulations, and we are not incorporating one in this final rule, for an IM or UN portable tank to conform to the outlet requirements if it is not intended to be unloaded while it remains on a transport vehicle with the power unit attached. Because this final rule eases the regulatory compliance burden for operators of portable tanks by providing an alternative interim provision, a regulatory analysis or a regulatory evaluation is not warranted. Any adverse safety impacts that may occur from the regulatory relief provided by this amendment would be minimized by conformance with the interim provisions adopted herein.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state, local and Indian tribe requirements but does not incorporate any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (2) and (5), above, and would preempt state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption will be November 26, 2003.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to manufacturers, operators, lessors and users of IM and UN portable tanks, some of whom are small entities. This final rule benefits such persons by further relaxing an existing regulatory requirement for an interim period. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. This final rule does not impose any new information collection burdens. The information collection associated with information specified in § 177.834(o) of this final rule is currently required by other Federal regulations. In § 177.834(o)(2)(i) and (o)(2)(iii), the information collection requirements pertaining to fire suppression and emergency shutdown are currently required by the Department of Labor's OSHA. Finally, in § 177.834(o)(2)(iv), the emergency response planning requirements are currently required by the Environmental Protection Agency. Based on the above

discussion, this final rule does not require any additional incremental burden hours.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned 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. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of this revision on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude there are no significant environmental impacts associated with this rule. Allowing the unloading of IM and UN portable tanks for an interim period, provided the unloading conditions in this rulemaking are met, permits operators to minimize the potential for environmental damage or contamination and allows manufacturers, lessors and users the needed time to properly equip the IM and UN portable tanks. For interested parties, an environmental assessment is available in the public docket.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.12, a new paragraph (b)(21) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(21) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

* * * * *

■ 3. In § 171.12a, a new paragraph (b)(20) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(20) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 4. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 5. In § 173.32, paragraph (g)(1) is revised and a new paragraph (h)(3) is added to read as follows:

§ 173.32 Requirements for the use of portable tanks.

* * * * *

(g) * * *

(1) A portable tank containing a hazardous material may not be loaded onto a highway or rail transport vehicle unless loaded entirely within the horizontal outline of the vehicle, without overhang or projection of any part of the tank assembly.

* * * * *

(h) * * *

(3) No person may offer a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, in an IM or UN portable tank that is equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, for unloading to a facility while it remains on a transport vehicle with the power unit attached unless—

(i) The tank outlets conform to § 178.275(d)(3) of this subchapter; or

(ii) The facility at which the IM or UN portable tank is to be unloaded conforms to the requirements in § 177.834(o) of this subchapter.

* * * * *

■ 6. In § 173.242, a new paragraph (c)(4) is added to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(c) * * *

(4) Unless provided by § 173.32(h)(3), an IM 101, 102 or UN portable tank with a bottom outlet and used to transport a liquid hazardous material that is a Class 3, PG I or II, or PG III with a flash point of less than 38 °C (100 °F); Division 5.1 PG I or II; or Division 6.1, PG I or II, must have internal valves conforming to § 178.275(d)(3) of this subchapter.

■ 7. In § 173.243, in paragraph (c), a second sentence is added to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard materials which pose a moderate hazard.

* * * * *

(c) * * * Unless provided by § 173.32(h)(3), an IM 101, 102 or UN portable tank, with a bottom outlet, used to transport a liquid hazardous material that is a Class 3, PG I or II, or PG III with a flash point of less than 38 °C (100 °F); Division 5.1, PG I or II; or Division 6.1, PG I or II, must have internal valves conforming to § 178.275(d)(3) of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 8. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. In § 177.834, paragraph (o) is revised to read as follows:

§ 177.834 General requirements.

* * * * *

(o) *Unloading of IM and UN portable tanks.* No person may unload an IM or UN portable tank while it remains on a transport vehicle with the motive power unit attached except under the following conditions:

(1) The unloading operation must be attended by a qualified person in accordance with the requirements in paragraph (i) of this section. The person performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

(2) Prior to unloading, the operator of the vehicle on which the portable tank is transported must ascertain that the conditions of this paragraph (o) are met.

(3) An IM or UN portable tank equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, and that contains a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, must conform to the outlet requirements in § 178.275(d)(3) of this subchapter; or, until October 1, 2004, be unloaded only at a facility conforming to the following—

(i) The applicable fire suppression requirements in 29 CFR 1910.106(e), (f), (g), (h), and (i);

(ii) The emergency shutdown requirements in 29 CFR 1910.119(f), 1910.120(q) and 1910.38(a);

(iii) The emergency response planning requirements in 29 CFR part 1910 and 40 CFR part 68;

(iv) An emergency discharge control procedure applicable to unloading operations, including instructions on handling emergencies that may occur during the unloading operation; and

(v) Public access to the unloading area must be controlled in a manner ensuring no public access during unloading.

(4) Alternatively, conformance to equivalent or more stringent non-federal requirements is authorized in place of paragraphs (o)(3)(i) through (o)(3)(iv) of this section.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 10. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 11. In § 178.275, paragraph (d)(3)(iv) is revised to read as follows:

§ 178.275 Specification for UN Portable Tanks intended for the transportation of liquid and solid hazardous materials.

* * * * *

(d) * * *

(3) * * *

(iv) For UN portable tanks, with bottom outlets, used for the transportation of liquid hazardous materials that are Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, the remote means of closure must be capable of thermal activation. The thermal means of activation must activate at a temperature of not more than 250 °F (121 °C).

* * * * *

Issued in Washington, DC on May 22, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–13492 Filed 5–29–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 001113318–3128–03; I.D. 110200D]

RIN 0648–AO75

Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna

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

ACTION: Final rule.

SUMMARY: NMFS amends regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery as they affect landing of BFT in the Atlantic pelagic longline fishery. The intent of this action is to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective June 30, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the HMS FMP may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division Web site at *www.nmfs.noaa.gov/sfa/hmspg.html*.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic highly migratory species (HMS) fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Act (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 78404, December 24, 2002), and is not repeated here. By this final rule, NMFS modifies the target catch requirements for pelagic longline vessels to land incidentally caught BFT, adjusts the Longline category North/South division line and adjusts the Longline category subquotas for each area, and provides NMFS inseason authority to modify the BFT retention limits for pelagic longline vessels.

Changes From the Proposed Rule

This final rule changes three of the proposed revisions to the regulatory text. In the proposed rule, two tiers of target catch requirements were proposed at 2,000 lbs. (907 kg) and 6,000 lbs. (2,727 kg) to allow the landing of one and two incidentally caught BFT, respectively. The final rule adds a third

tier of target catch requirements by requiring the landing of 30,000 lbs. (66,138 kg) of target fish to land three BFT. In addition, the proposed rule would have adjusted the Longline category subquotas to allocate 70 percent to the southern area and 30 percent to the northern area. The final rule divides the Longline category subquotas to allocate 60 percent to the southern area and 40 percent to the northern area. Finally, the advance notice for in season adjustment to target catch requirements was reduced from 30 days to no less than 21 days. These changes were made to further reduce dead discards of BFT, minimize negative social and economic impacts to the fishery, and to respond to comments regarding the changed fishing patterns of the pelagic longline fleet.

Comments and Responses

Comment 1: Numerous comments supported establishing a target catch requirement in terms of a specific weight versus a percentage to allow for the retention of incidentally caught BFT. Comments stated that the pelagic longline fishery has changed since the two-percent target was implemented and having one set of target catch requirements coastwide will simplify regulations and facilitate compliance. A specific weight tolerance will also assist enforcement agents in assessing compliance.

Response: The final action establishes target catch requirements as specific weights, rather than as percentages, with the intent of reducing BFT discards in all areas, and at the same time minimizing confusion and providing positive economic impacts to longline vessels in both southern and northern management areas. NMFS believes that a specific target weight regardless of geographic location would simplify regulation and facilitate compliance.

Comment 2: NMFS should allow for a third and/or fourth tier of target catch to allow vessels to land three and/or four BFT for those vessels conducting longer trips. For example, NMFS should establish a target catch requirement for all areas, at all times of 20,000 lbs. (44,092 kg) to retain three BFT, and of 30,000 lbs. (66,138 kg) to retain four BFT. Other comments suggested NMFS allow full retention of all catch to eliminate all discards and bring the agency into full compliance with the Magnuson-Stevens Act.

Response: NMFS has modified the final action to include a third tier of target catch allowance in the final action, explicitly allowing the retention of 3 BFT with 30,000 lbs. (66,138 kg) of target catch. This additional tier of target catch is consistent with the previous percentage-based target catch requirements that allowed a few vessels to land three BFT in conjunction with 30,000 lbs. (66,138 kg) of target catch. The proposed rule for this action would not have allowed these few vessels to retain three BFT regardless of the target catch onboard. Although only a handful of vessels are large enough to complete trips with target catches greater than 30,000 lbs. (66,138 kg), allowing these vessels to retain three BFT would further meet the intent to reduce discards of BFT, avoid incentives to target BFT, and not risk overharvest of the incidental catch quota.

Comment 3: The preferred alternatives may not be providing a reasonable opportunity for pelagic longline vessels to harvest the quota allocated to that category. The inseason adjustment authority should not be limited to a range of zero to three BFT per trip and/or by 25 percent of the target catch requirements.

Response: Under the Atlantic Tunas Convention Act, NMFS is required to provide U.S. fishermen a reasonable opportunity to take the BFT quota allocated to the United States by the ICCAT. Pelagic longline vessels are not allowed to target BFT and thus there is no directed fishery on BFT. However, due to the incidental catch of BFT in pelagic longline operations targeting other species, NMFS has provided a quota and target catch requirements to provide pelagic longline vessels a reasonable opportunity to land their incidentally caught BFT in order to reduce discards and provide positive economic impacts to the pelagic longline fishery.

Comment 4: Numerous comments stated support for the relocation of the boundary line separating the northern and southern management areas to 31°00′ N. lat., near Jekyll Island, Georgia. This is an area with little longline activity and should reduce confusion regarding the area in which incidental BFT were harvested. Other comments stated that the Gulf of Mexico should be off limits to all retention of BFT by pelagic longline vessels and a boundary line should be established in the Straits of Florida.

Response: NMFS' final action maintains the proposed location of the boundary line at 31°00′ N. lat., near Jekyll Island, Georgia. The intent of the line is to account for seasonal differences in the fisheries within each area and to prevent one area from consuming all available quota. The location of the line was chosen in an area with little longline fishing activity to facilitate enforcement and reporting. Eliminating the incidental retention of BFT by pelagic longline vessels operating in the Gulf of Mexico would not meet the intent of this rulemaking, as it could increase discards, and have negative impacts to pelagic longline fishermen.

Comment 5: Comments stated support for a reallocation of the Longline category quota based on the new location of the North/South boundary line. Comments suggested the preferred alternative of 30 percent for the northern area and 70 percent for the southern area should be reconsidered. The proposed allocation may not reflect the current fishing pattens of the pelagic longline fishery and may lead to increased effort and mortality on spawning BFT in the Gulf of Mexico, which has been designated by ICCAT as a spawning area in the Western Atlantic Ocean. Some comments suggested NMFS should re-calculate the North/South subquota allocation based on the number of hooks versus the number of sets. Some comments suggested a quota split of 50/50, while others suggested a split of 40 percent for the northern area and 60 percent for the southern area.

Response: Based on the analysis conducted in the Environmental Assessment, Regulatory Impact Review, and the Regulatory Flexibility Analysis, NMFS has determined that an adjustment to the Incidental Longline category subquota allocation between areas is warranted. Due to the movement of the boundary line and the adjustments in the target catch allowances in both the northern and southern areas, and the apparent redistribution of longline effort in response to bycatch reduction measures, NMFS adjusts the Longline category subquota to allocate 60 percent to the southern area and 40 percent to the northern area. This adjustment is made to reflect the estimated additional landings likely to be applied in the northern area based on the above analysis. The amount of BFT landed is expected to approach the subquota levels of the Longline category fishery, but not exceed them.

Comment 6: Some comments stated that NMFS should increase the number of observers in the Gulf of Mexico pelagic longline yellowfin tuna fishery.*Response:* ICCAT requires five percent of the pelagic longline trips to be selected for observer coverage. Vessels are selected based on a random five percent sampling of sets. Actual deployment of observers on vessels in the past had been constrained by a number of factors including logistic requirements and safety concerns and thus it has not been possible to place

observers on all selected trips. NMFS is working towards improving observer coverage by increasing the sampling of trips to eight percent and facilitating increased communication between vessel operators and observer program coordinators, particularly in regards to safety requirements for the placement of observers (see 50 CFR 600.746), and the need to have all safety equipment on board as required by the U.S. Coast Guard.

Comment 7: Numerous comments stated support for the inseason adjustment authority, but stated that the 30–day delayed effectiveness prior to the regulation changes is too long. NMFS should employ a 2–week notice to be timely responding to resource concerns.

Response: In the proposed rule, NMFS had proposed adjusting the limits through an inseason action, with 30 days public notice. However, NMFS agrees that the highly migratory nature of BFT could result in rapid changes of fishing gear interaction rates. In order for in-season adjustments to work effectively, NMFS must respond quickly. In addition, NMFS is concerned about providing adequate notice of changes to fishing vessels at sea. Therefore, NMFS has reconsidered the balance between prompt action and notification and reduced the public notice period to no less than 21 days, which is the expected trip length for larger vessels fishing further offshore.

Comment 8: NMFS should define ''target catch'' so as to prohibit the landing of unmarketable species just to reach a minimum threshold to retain a BFT and encourage the release of all live BFT caught by pelagic longline vessels.

Response: The current regulations addressing target catch limits at 635.23 (f)(1) state that species other than BFT must be legally caught, retained, and offloaded from the same trip and recorded on the dealer weighout slip as sold. The current regulatory language meets the intent of preventing the landing of unmarketable species just to reach a minimum threshold. In regard to release of BFT retrieved alive by pelagic longline vessels, NMFS is currently working on a national bycatch reduction strategy. To view the goals, objectives, and strategies please visit *www.nmfs.noaa.gov*.

Comment 9: NMFS should consider various physical oceanographic parameters and re-examine the Mid-Atlantic closure area because it is not used as a spawning area. Forcing vessels to move further offshore may produce a safety issue. Other comments stated that NMFS should analyze data gathered during the Northeast Distant experimental fishery to adjust management measures for the pelagic longline fishery in the future.

Response: NMFS' intent in creating the Mid-Atlantic closure area was to ensure compliance with ICCAT recommendations to reduce the bycatch and dead discards of BFT by pelagic longline vessels, not to protect a potential BFT spawning area. The available data, based on logbooks submitted by fishermen, indicate a substantial decline in BFT bycatch throughout the year, indicating the closed area may be effective at reducing discards. Although NMFS realizes that it may be necessary to adjust the time and/or area of the closure based on new data including changed physical oceanographic patterns, fishing activity etc., available information does not warrant such changes at this time. NMFS will continue to analyze logbook and observer data from the Northeast Distant experimental fishery in order to consider possible adjustments to target catch requirements for landing BFT by longline vessels, or to make other adjustments as necessary in order to minimize dead discards.

Classification

These regulatory amendments are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. An Initial Regulatory Flexibility Analysis was prepared for the proposed rule and submitted to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this rule. The analyses of the FRFA found that the final actions under this rule would have beneficial impacts; therefore, consideration of alternatives to minimize impacts to small entities is contrary to the purposes of the Regulatory Flexibility Act. The proposed rule (67 FR 78404, December 24, 2002) sets forth the purpose and need for this action and a description of the alternatives considered and impacts of those alternatives, which are not repeated here. There are approximately 171 pelagic longline vessels that are permitted to retain Atlantic tunas and swordfish, all of which are considered small entities, and average annual gross revenues per vessel are approximately $168,000. Annual gross revenues from the Atlantic pelagic longline fishery are approximately $29 million. NMFS selected this final action because the selected target catch requirements will minimize BFT discards while allowing retention of truly incidentally caught BFT and preventing a directed fishery. One target catch alternative considered was rejected because it would not reduce BFT discards as much as the final action, and it would have negative economic impacts. While the other alternatives generally had positive economic impacts, NMFS did not select them because they maintained differential target catch requirements, which no longer seemed warranted based on available data, or because they would not have reduced BFT discards as much as the final action. The final action will have a positive economic impact on revenues approximately a 1.2 to 1.5% increase of pelagic longline vessels. While the new north/south boundary line and inseason adjustment authority will not have any direct economic impacts, NMFS selected these measures as part of the final action because they could help prevent negative impacts on small entities due to closures. In addition, the new boundary line was selected to address confusion regarding the applicability of regulations. A copy of the FRFA and other analytical documents prepared for this rule are available from NMFS (see **ADDRESSES**).

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA and other analytical documents prepared for this rule, are available from NMFS (see **ADDRESSES**).

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

The regulations implemented through this final rule are not expected to have any additional impact on sea turtles or other endangered species or marine mammals as this action is not likely to increase or decrease pelagic longline effort, nor is it expected to shift effort into other fishing areas. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the

actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No impacts are expected from this final action that would adversely affect the implementation of the requirements of the BiOp.

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of May 15, 2003, NOAA Fisheries has received 11 responses, all concurring with NOAA Fisheries' consistency determination. Because no responses were received from other states, their concurrence is presumed.

The area in which this final action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the Highly Migratory Species Management Division of NOAA Fisheries. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 23, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.23, paragraph (f) is revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally when fishing for other species. For vessels fishing North or South of 31°00′ N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provided that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00′ N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing the adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 21 calendar days after the adjustment is filed with the Office of the **Federal Register** for publication.

* * * * *

■ 3. In § 635.27, paragraph (a)(3) is revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. In the initial quota specifications issued under paragraph (a) of this section, no more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat.

* * * * *

[FR Doc. 03–13556 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 104
Friday, May 30, 2003

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

Office of the Secretary

7 CFR Part 3

Debt Management

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA) proposes to amend its regulations that govern the management of debts owed to it by program participants and other debtors. The rule proposes changes to existing regulations to further implement the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards. The changes will affect USDA requirements for collection and settlement of debts, including administrative offset of eligible payments, and referral to the Department of the Treasury (Treasury) for collection. These changes are intended to ensure that USDA debt collection procedures comply with current laws and Treasury regulations governing Federal debt management.

DATES: Comments should be submitted on or before July 29, 2003, in order to be ensured of consideration. Comments received after this date may be considered to the extent practicable.

ADDRESSES: Comments should be sent to Dale Theurer, Credit, Travel, and Accounting Policy Division, Office of the Chief Financial Officer, Department of Agriculture, Mail Stop 9010, Room 3417 South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may also be submitted via electronic mail to *dtheurer@cfo.usda.gov.* All comments, including names and addresses will become a matter of public record. A copy of this rule, and the comments received, may be obtained by contacting Mr. Theurer at (202) 720–1167.

FOR FURTHER INFORMATION CONTACT: Dale Theurer at (202) 720–1167. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601 *et seq.*).

Executive Order 12988

The proposed rule has been reviewed in accordance with Executive Order 12988. If this proposed rule is adopted, it preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule or action taken under this rule, all administrative remedies must be exhausted.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501, *et seq.*, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

On November 7, 2001, USDA published an advanced notice of proposed rulemaking (66 FR 56247) for revision of the USDA debt management regulations, 7 CFR part 3, to reflect promulgation of the revised Federal Claims Collection Standards (FCCS) and to incorporate other USDA specific changes with respect to collection of debt by administrative offset. No comments were received on this notice.

USDA now publishes a rule proposing revisions to 7 CFR part 3 to comply with FCCS and further implement the Debt Collection Improvement Act of 1996. The new regulation when final will apply to all USDA agencies and corporations of USDA, such as the Commodity Credit Corporation (CCC). The regulations at 7 CFR 3.21(b) currently provide that each USDA agency may adopt their own debt collection regulations to apply in lieu of 7 CFR part 3. However, this proposed rule does not contemplate the promulgation of separate USDA agency regulations in lieu of 7 CFR part 3. Instead, 7 CFR part 3 will establish general debt collection procedures for all USDA agencies, except where an agency needs supplemental regulations to meet program-specific legal requirements. A specific provision refers the reader to 7 CFR part 1403 for CCC debt collection procedures, but it is the intent of CCC to adopt 7 CFR part 3 generally in a forthcoming revision of 7 CFR part 1403.

The current subpart A of part 3 is an original debt settlement authority provided specifically to USDA for specific credit and farm programs in the Act of December 20, 1944, as amended (12 U.S.C. 1150 *et seq.*) (1944 Act). The standards and sums in the 1944 Act are mostly obsolete, yet they remain in effect. At some point, the provisions of the 1944 Act were expanded upon with some additional regulatory requirements reflected in subpart A, and it apparently formed the core of USDA debt collection regulations until enactment of the Debt Collection Act of 1982, Public Law 97–365, and the subsequent promulgation of 7 CFR part 3, subpart B in implementation of that Act. However, subpart A still reads as if applicable to all USDA debt collection activities, and one program was recently added to the list of programs in § 3.10 even though those programs are not designated by law in the 1944 Act.

USDA finds that the authorities provided in the 1944 Act would be rarely used, if ever. Accordingly, this rule proposes to remove the text of the current 7 CFR part 3, subpart A, from 7 CFR part 3 entirely. To the extent that

use of that authority may ever be appropriate, USDA has reserved the right to collect, compromise, suspend, or terminate the collection of debts as otherwise authorized by law in '' 3.1(a)(2) of the proposed rule.

Subpart A of the proposed rule provides the purpose and scope of the rule, authority, definitions, and delegation of authority to USDA agency heads to exercise any of the functions provided by this part, except as otherwise provided.

Subpart B sets forth the standards for the administrative collection and compromise of claims. This subpart is an adaption of the language of the corresponding portion of the FCCS, 31 CFR part 901, regarding the administrative collection of claims. For the compromise of claims, suspension or termination of collection activities, and referrals to the Department of Justice (DOJ), §§ 3.19 to 3.21 direct USDA agencies to follow the procedures provided in the FCCS, 31 CFR parts 902–904. It also includes provisions for the reporting of debts to consumer or commercial credit reporting agencies; suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges; liquidation of collateral; collection in installments; assessment of interest, penalties, and administrative costs; and use and disclosure of mailing addresses.

With respect to the collection of claims, the intent of this revision of 7 CFR part 3 is to encourage USDA agencies to issue demand letters for payment of a delinquent debt that notifies the debtor of all options the USDA agency has for collection of the debt, including discussions for alternative methods of payment, reporting to credit bureaus, collection through collection agencies, administrative offset, administrative wage garnishment, Federal salary offset (where applicable), tax refund offset, referral to the Department of the Treasury (Treasury) for collection through the Treasury Offset Program (TOP) or through cross-servicing, and litigation. Demand letters will provide debtors with notice of their rights to review the records related to the debt and request administrative review of the debt.

Subpart F of the proposed rule provides a consolidated administrative review process to review the validity and existence of the debt for all debt collection action authorized by DCIA for which DCIA requires due process prior to collection. The intent here is to provide agencies with the authority to have one notice and one administrative review as to the existence and validity of the debt for all debt collection tools, whether the debt is collected internally by USDA or prior to referral of the debt to Treasury for collection. This does not preclude a prior hearing on a substantive program matter that may have given rise to the claim owed to USDA. Additionally, for purposes of administrative wage garnishment, the administrative review will concern only the validity and existence of the debt prior to referral to Treasury. Treasury, or its contractors, will service and issue USDA administrative wage garnishment orders, including establishment of repayment schedules, for which Treasury will provide debtors with an additional opportunity to seek USDA review of the current status of the debt and the burden of the proposed repayment schedule upon notice to the debtor of the proposed garnishment order itself.

Subpart C of the proposed rule describes the requirements for referral of debt to Treasury, and sets forth specific rules for referral to Treasury for cross-servicing. Under cross-servicing, Treasury acts on behalf of other Federal agencies to pursue collection of debts using a variety of means. All debts may be referred to Treasury for cross-servicing, including those that arise as a result of default under an instrument or agreement for which no further demand letter or due process review is required prior to initiating collection.

Subpart D of the proposed rule provides procedures for administrative offset through the mandatory TOP program and through non-centralized offset with other Federal agencies or by internal administrative offset within USDA. The existing Farm Service Agency (FSA) and CCC debt collection regulations include a provision that authorizes those agencies, upon receipt of a request for an offset of a FSA or CCC payment to satisfy a debt owed a creditor agency, to take a debtor's pro rata share of a payment to an entity (such as a partnership or corporation) of which the debtor is a part. The proposed rule would authorize each agency of USDA to take pro rata shares of payments to entities in order to satisfy an offset request received from Federal or USDA creditor agency provided that the entity received notice of the proposed offset from the creditor agency.

USDA will accomplish the administrative offset of tax refunds through referral to Treasury under TOP. Accordingly, to meet the 60-day notice and opportunity for review period required by law prior to offset of tax refunds, this rule provides that referrals to TOP will not be made until 60 days after notice of the administrative offset is sent to the debtor, or until after completion of a review under subpart F if that occurs later. However, USDA internal administrative offsets shall be made 31 days after the date the notice of administrative offset is sent if no request for review under subpart F is received.

Subpart E of the proposed rule outlines the process USDA will use to collect debts using administrative wage garnishment. In demand letters sent to debtors, or separately, USDA will advise debtors that it will refer the debt to Treasury for collection through administrative wage garnishment if other sources for satisfaction of the debt are not available. Treasury requires that all debts referred to it for collection, using whatever collection tool, be legally enforceable. Accordingly, debtors will have the opportunity at this stage to seek review of the debt for purposes of assuring legal enforceability prior to referral to Treasury for administrative wage garnishment, administrative offset, tax refund offset, etc.

Once at Treasury, if Treasury or its designee determines that administrative wage garnishment is appropriate, Treasury or its designee will issue a proposed garnishment order to the debtor and provide the debtor with the opportunity to request review of the debt and repayment schedule in accordance with the administrative wage garnishment hearing procedures in 31 CFR 285.11. If the debtor requests such a hearing, Treasury will refer the request to the USDA creditor agency to which the debt is owed and the creditor agency will contact OCFO for designation of a hearing official. In consultation with the USDA creditor agency to which the debt is owed, OCFO will designate a hearing official. OCFO will forward the final determination of the hearing official to Treasury for implementation with respect to the subject garnishment order.

As discussed above, subpart F establishes procedures for a review or hearing on the validity and existence of the debt, if requested by the debtor upon receipt of a demand letter or notice to collect by one of the administrative mechanisms. For debt collection proceedings related to domestic programs initiated by FSA, CCC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Federal Crop Insurance Corporation, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936

or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*), any administrative review will be conducted by the National Appeals Division (NAD) in accordance with 7 CFR part 11. For other USDA agencies, subpart E provides some flexibility as to how they will meet the administrative review requirement.

Subpart G of the proposed rule provides rules for Federal salary offset, for which there are separate review and hearing procedures required by law. Subpart G includes the provisions of the current 7 CFR part 3, subpart C, as modified to reflect changes made to the government wide Federal salary offset rules, 5 CFR part 550, by the Office of Personnel Management (OPM) to conform to DCIA (*see* 63 FR 72,099 (December 31, 1998)). While OPM requires its approval for significant changes to agency Federal salary offset regulations, OPM provided in the preamble to its December 31, 1998, final rule that such review and approval was not required for agency changes to conform to the changes it had made in that final rule. The changes to the USDA Federal salary offset rules proposed in this notice merely adopt the prior changes made by OPM, and thus, OPM approval is not required. These proposed rules also provide that the salaries of Farm Service Agency county executive directors and county office employees shall be subject to administrative offset in accordance with 7 CFR part 792 or part 1403.

Subpart H of the proposed rule incorporates the current text of 7 CFR part 3, subpart D, regarding reporting of discharge of debts to the Internal Revenue.

The current text of 7 CFR part 3, subpart E, regarding adjustment of certain civil monetary penalties, is redesignated as subpart I. The Adjusted Civil Monetary Penalties in newly redesignated subpart I will be updated at a later date by the Department and are not republished at this time.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Agriculture, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay Administration, Salaries, Wages.

For the reasons stated in the preamble, USDA proposes to revise 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

1. The authority citation for 7 CFR part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904, unless otherwise noted.

2. Subpart E is redesignated as subpart I.

3. The table of contents and subparts A through D are revised, and subparts E through H are added, to read as follows:

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.

3.1 Purpose and scope.
3.2 Authority.
3.3 Definitions.
3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

3.10 Aggressive agency collection activity.
3.11 Demand for payment.
3.12 Reporting of consumer debts.
3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
3.15 Liquidation of collateral.
3.16 Collection in installments.
3.17 Interest, penalties, and administrative costs.
3.18 Use and disclosure of mailing addresses.
3.19 Standards for the compromise of claims.
3.20 Standards for suspending or terminating collection activities.
3.21 Referrals to the Department of Justice.

Subpart C—Referral of Debts to Treasury

3.30 General requirements.
3.31 Mandatory referral for cross-servicing.
3.32 Discretionary referral for cross-servicing.
3.33 Required certification.
3.34 Fees.

Subpart D—Administrative Offset

3.40 Scope.
3.41 Procedures for notification of intent to collect by administrative offset.
3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
3.43 Non-centralized administrative offset.
3.44 Centralized administrative offset.
3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
3.46 Offset against tax refunds.
3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart E—Administrative Wage Garnishment

3.50 Purpose.
3.51 Scope.
3.52 Definitions.
3.53 Procedures.

Subpart F—Administrative reviews for administrative offset, administrative wage garnishment, and disclosed to credit reporting agencies

3.60 Applicability.
3.61 Presiding employee.
3.62 Procedures.

Subpart G—Federal Salary Offset

3.70 Scope of this subpart.
3.71 Definitions.
3.72 Coordinating offset with another Federal agency.
3.73 Determination of indebtedness.
3.74 Notice requirements before offset.
3.75 Request for a hearing.
3.76 Result if employee fails to meet deadlines.
3.77 Hearings.
3.78 Written decision following a hearing.
3.79 Review of USDA records related to debt.
3.80 Written agreement to repay debts as alternative to offset.
3.81 Procedures for salary offset: when deductions may begin.
3.82 Procedures for salary offset: types of collections.
3.83 Procedures for salary offset: methods of collections.
3.84 Procedures for salary offset: Imposition of interest, penalties, and administrative costs.
3.85 Non-waiver of rights.
3.86 Refunds.
3.87 Agency regulations.

Subpart H—Cooperation with the Internal Revenue Service

3.90 Reporting discharged debts to the Internal Revenue Service.

Subpart I—Adjusted Civil Monetary Penalties

3.91 Adjusted civil monetary penalties.

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose and scope.

(a) *In general.* (1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally shall take precedence over this part.

(b) *Agency specific regulations.* (1) The regulations of this part shall apply to the Commodity Credit Corporation (CCC) to the extent specified in 7 CFR part 1403.

(2) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

§ 3.2 Authority.

The regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 *et seq.*) and the Federal Claims Collection Standards issued pursuant to the DCIA by the Departments of the Treasury and Justice (31 CFR parts 901 through 904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to the Department of Justice for litigation to collect debts owed the Federal government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

§ 3.3 Definitions.

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

(a) *Agency* means a subagency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

(b) *Centralized offset* means referral of a debt to the Treasury Offset Program (TOP) for offset of payments made to a debtor by Federal agencies other than USDA.

(c) *Claim* and *debt* are synonymous and interchangeable, and refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency.

(d) *Contracting officer* has the same meaning as in 41 U.S.C. 601.

(e) *Credit reporting agencies* (also known as *credit bureaus*) means major consumer credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

(f) *Creditor agency* means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to collection of the debt.

(g) *Debt collection center* means Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(h) *Debtor* means an individual, a public or private entity, a State, local or tribal government, or the person or entity with legal responsibility for assuming the obligation of the debtor, who owes a delinquent, nontax debt to the United States, but does not include another Federal agency.

(i) *Delinquent* means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(j) *FCCS* means the Federal Claims Collection Standards published in 31 CFR parts 901 through 904.

(k) *Federal agency* means any other Department or entity within the Executive branch of the government.

(l) *Internal administrative offset* means a non-centralized administrative offset between a USDA creditor agency and a USDA payment authorizing agency.

(m) *Non-centralized administrative offset* means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. An internal administrative offset is a type of non-centralized administrative offset.

(n) *OCFO* means the USDA Office of the Chief Financial Officer.

(o) *OGC* means the USDA Office of the General Counsel.

(p) *Payment authorizing agency* means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

(q) *Recoupment* means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

(r) *Reviewing officer* means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

(s) *Secretary* means the Secretary of Agriculture, unless otherwise specified.

(t) *Treasury* means the United States Department of the Treasury.

(u) *USDA* means the United States Department of Agriculture.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility, and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) *Demand letters.* Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency should follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with 31 CFR 904.1 or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of

limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) *Required notices.* In demand letters, the USDA creditor agency shall inform the debtor of:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) The willingness of the creditor agency to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (*see* § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office within the creditor agency;

(6) The intention of the creditor agency to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's USDA payments and refer the debtor's debt to the Treasury Offset Program for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) *Private collection agency.* [Reserved].

(iii) *Credit reporting agency reporting.* Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) *Administrative wage garnishment.* Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation.* Refer the debt to the Department of Justice in accordance with 3.21 to initiate litigation to collection the debt;

(vi) *Referral to Treasury.* Referral of the debt to Treasury for collection in accordance with subpart C of this part;

(7) That USDA debts over 180 days delinquent must be referred to Treasury for the collection actions described in paragraph (b)(6) of this section;

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the USDA creditor agency's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* subpart F of this part);

(10) [Reserved].

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* subpart G of this part);

(12) How a debtor may request a waiver of the debt, if applicable;

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guarantees, and insurance (*see* § 3.14);

(16) If applicable, the creditor agency's intention to suspend or revoke licenses, permits, or privileges (*see* § 3.14); and

(17) That the debtor should advise the creditor agency of a bankruptcy proceeding of the debtor or of another person liable for the debt being collected.

(c) *Exceptions to notice requirements.* A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (b)(17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(d) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, internal administrative offset, the procedures applicable to offset should be followed (*see* subpart D of this part). The availability of funds or money for debt satisfaction by internal administrative offset, and the agency's determination to pursue collection by internal administrative offset, shall release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., p. 157) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting consumer debts.

(a) *Notice.* In demand letters to debtors sent in accordance with § 3.11, agencies shall inform debtors:

(1) The intent of the agency to report the delinquent consumer debt to credit reporting agencies after 60 calendar days;

(2) The specific information to be transmitted (*i.e.,* name, address, and taxpayers identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (*i.e.* repayment in full or a repayment agreement); and

(4) The rights of the debtor to seek review of the existence of the debt in accordance with subpart F of this part.

(b) *Disclosure.* Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 5901.4.

(c) *Non-duplication of hearings.* When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit bureaus.

(d) *Stay of disclosure.* Agencies shall not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F until a final determination is made by a reviewing official that upholds the agency intent to disclose.

(e) *Commercial debt.* The requirement of this section does not apply to commercial debts, although agencies should report commercial debts to commercial credit bureaus.

§ 3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets. [Reserved.]

§ 3.14 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the Chief Financial Officer or the Deputy Chief Financial Officer. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. *See* 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. *See* 31 U.S.C. 3201(e).

(c) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims should consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor should be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the Federal government under the Internal Revenue Code) owed to any Federal agency or instrumentality is grounds for nonprocurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. *See* 7 CFR 3017.305(c)(3) and 3017.405(a)(2).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also should extend to USDA programs or activities that are administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the Federal Government.

(g) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies should seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable statutes and regulations, agencies should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency should seek legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written

agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. If not included in the agency's demand notice, an agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies shall charge interest on debts owed the United States as follows, except as otherwise required by law:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) Agencies may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal, except as otherwise required by law.

(g) Agencies shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) [Reserved.]

(i) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law. Agencies shall consult OGC before imposing interest and related charges under common law for any debt.

§ 3.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or 31 CFR parts 902 through 904 or other authority, agencies may send a request Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 3.19 Standards for the compromise of claims.

An agency shall follow the standards set forth in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

§ 3.20 Standards for suspending or terminating collection activities.

An agency shall follow the standards set forth in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

§ 3.21 Referrals to the Department of Justice.

An agency shall promptly refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies shall follow the procedures set forth in 31 CFR part 904 in making such referrals.

Subpart C—Referral of Debts to Treasury.

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset. Additionally, USDA has chosen to transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all of these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where

applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized offset so simultaneous referrals are not always the norm. This subpart sets forth rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized offset are set forth in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury shall service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies shall transfer to Treasury any legally enforceable nontax debt in excess of $25, or combination of debts less than $25 that exceeds $25 (in the case of a debtor whose taxpayer identification number is unknown the applicable threshold is $100), that has or have been delinquent for a period of 180 days or more in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure (*see* 31 CFR 385.12(d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (*see* 31 CFR 285.12(d)(3) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA Chief Financial Officer.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F of this part), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies should consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through internal administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

(a) The debts being transferred are valid and legally enforceable;

(b) There are no legal bars to collection; and

(c) That the agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

§ 3.40 Scope.

(a) This subpart sets forth the procedures to be used by agencies in collecting debts by administrative offset. The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) This section does not apply to:

(1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);

(3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;

(4) Offsets against Federal salaries (such offsets are covered by subpart F of this part);

(5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(6) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts;

(7) Offsets in the course of judicial proceedings, including bankruptcy; or

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contracts Disputes Act, 41 U.S.C. 601–613.

(c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(d) Supplemental provisions related to offsets by CCC may be found at 7 CFR part 1403 and for the Farm Service Agency (FSA) at 7 CFR part 792.

(e) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(f) In bankruptcy cases, agencies should seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

§ 3.41 Procedures for notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA internal administrative offset) to collect the debt 30 calendar days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized offset, the intent to refer the debt to Treasury for collection through centralized offset (including possible offset of tax refunds) 60 calendar days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and

(iii) To make a written agreement to repay the debt.

(b) The procedures set forth in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) The agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (*see, e.g.*, § 3.11).

(c) The Notice of Intent to Collect by Administrative Offset should be included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency will seek to employ.

§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 20 calendar days of receipt of the Notice of Intent to Collect by Administrative Offset by the debtor. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 20 calendar days of the date the notice was received by the debtor. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the Government's interest in collecting the debt against fairness to the debtor.

(c) A debtor must request an administrative review of the debt under subpart F of this part within 30 days for purposes of a proposed collection by non-centralized administrative offset and within 60 days for purposes of a proposed collection by referral to Treasury for offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) *Scope.* In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt, from for example, a Federal employee's lump sum payment upon leaving Government service in order to pay an unpaid advance. Also, non-centralized offsets include USDA internal administrative offsets, for example, of CCC payments to pay FSA delinquent debts. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset.

(b) *Effectuation of offset.* A non-centralized offset may be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(c) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) *Certification.* A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as set forth in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(d) *Responsibilities of payment authorizing agencies.* Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) *Application of recovered amounts to satisfaction of debts.* When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 3.44 Centralized administrative offset.

(a) *Mandatory referral.* After the notice and review opportunity requirements of § 3.41 are met, an agency shall refer debts which are over 180 days delinquent to Treasury for collection through centralized offset 60 days after the agency has provided the

notice and opportunity for review required under § 3.41. If the debtor seeks review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 180 days delinquent.

(b) *Discretionary referral.* After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 180 days delinquent.

(c) *Procedures for referral.* Agencies shall refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR 285.5.

(d) *Payment authorizing agency responsibilities.*

(1) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury under this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized offset under this section must notify a debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency; or

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized offset under § 3.44.

§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 to 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in § 3.40(e).

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

§ 3.51 Scope.

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart shall apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

§ 3.52 Definitions.

As used in this subpart the following definitions shall apply:

(a) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(b) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

(c) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(d) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for

issuance of garnishment orders by Treasury or its contractors.

(b) In the demand letter issued under § 3.11, agencies must notify debtors of their intent to refer to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact OCFO for selection of a hearing official. The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to the National Appeals Division. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO shall provide a copy of the hearing official's final decision to Treasury for implementation with respect to the subject garnishment order.

Subpart F—Administrative reviews for administrative offset, administrative wage garnishment, and disclosed to credit reporting agencies.

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section shall satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized offset.

(b) For debt collection proceedings initiated by FSA, CCC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Federal Crop Insurance Corporation, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*), unless otherwise specified, any administrative review will be conducted by the National Appeals Division in accordance with 7 CFR part 11 and not the procedures of this subpart.

§ 3.61 Presiding employee.

An agency reviewing officer may be an agency employee or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of these notices simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 30 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 calendar days after the request for review is received.

(g)(1) Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(2) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the

debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i)(1) Within no more than 30 calendar days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days.

(2) The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(3) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*) as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(j) The reviewing officer will promptly distribute copies of the decision to the USDA Chief Financial Officer (CFO), the USDA agency CFO's, the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 3.70 Scope of this subpart.

(a) The provisions of this subpart set forth USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current USDA employees and other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) These regulations do not apply to debts owed by Farm Service Agency county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.

(d) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) These regulations identify the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions shall apply:

(a) *Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

(b) *Debt* means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.

(c) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

(d) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces, but does not include a Farm Service Agency county executive director or county office employee.

(e) *Hearing official* means a USDA administrative law judge or some other individual not under the control of the Secretary.

(f) *Salary offset* means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

(g) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.72 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with this subpart.

(b) *When another agency is owed the debt.* USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) *Mandatory centralized offset.* Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and; and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications should be directed.

§ 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by USDA not later than 30 calendar days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.77 Hearings.

(a) If an employee timely files a petition for a hearing under § 3.75, USDA shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing; and

(d) The payment schedule (including percentage of disposable pay), if applicable.

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt by other means authorized by this part.

(f) A final determination by the hearing official, regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

§ 3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 calendar days of the date of the Notice of Intent.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

§ 3.80 Written agreement to repay debts as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 calendar days of the date of the Notice of Intent.

(b) *USDA response.* USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 3.81 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (*see* subpart D of this part).

§ 3.82 Procedures for salary offset: Types of collections.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.83.

§ 3.83 Procedures for salary offset: Methods of collections.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.84 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

§ 3.85 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under this subpart will be interpreted as a waiver of any

rights that the employee may have under 5 U.S.C. 5514.

§ 3.86 Refunds.

USDA will refund promptly to the appropriate individual amounts offset under this subpart when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) USDA is directed by an administrative or judicial order to refund deducted from the employee's current pay.

§ 3.87 Agency regulations.

USDA agencies may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Subpart H—Cooperation with the Internal Revenue Service.

Authority: 26 U.S.C. 61; 31 U.S.C. 3720A; I TFRM 4055.50.

§ 3.90 Reporting discharged debts to the Internal Revenue Service.

When USDA discharges a debt for less than the full value of the indebtedness, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

Signed in Washington, DC, on May 14, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–13245 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–KS–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–1 PR]

Irish Potatoes Grown in Colorado; Increase in Membership on the Area No. 2 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a change that would increase the number of members on the Area No. 2 Colorado Potato Administrative Committee (Committee) from 12 to 14. The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. Specifically, this rule would increase from seven to nine the number of producers serving on the Committee by adding a second representative from the district comprised of Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from Area No. 2. This rule would not change the number of handler representatives on the Committee, which would remain at five. The addition of two new producer members would provide the Committee with greater industry representation and therefore increased effectiveness.

DATES: Comments must be received by June 16, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

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

This rule would increase from 12 to 14 the number of members on the Committee by adding a second producer representative for Chaffee County and Saguache County, and by creating a position for a producer representative for certified seed potato producers from Area No. 2. Consistent with § 948.52, each new member position would have an alternate who would have the same qualifications as the member. This rule would not change the number of handler representatives on the Committee, which would remain at five. This action was unanimously recommended by the Committee at a meeting on March 20, 2003.

Section 948.4 of the order establishes three subdivisions, or areas, within the State of Colorado, and § 948.50 provides authority for the establishment of a committee as an administrative agency for each area. Section 948.53 provides authority for the reestablishment of these areas or subdivisions of these areas, as well as the redistribution of representation within area subdivisions or among marketing organizations within the respective areas. Finally, § 948.6 provides a definition for seed potatoes.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee as reestablished pursuant to § 948.53. For Area No. 2, the Committee currently consists of seven producer members and five handler members. Two producers are from Rio Grande County, one producer is from Chaffee County or Saguache County, one producer is from Conejos County, two producers are from Alamosa County, and one producer is from all remaining counties in Area No. 2. Two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

As indicated above, the order currently provides that one producer member on the Committee represents producers in both Chaffee County and Saguache County. Based on a Committee recommendation, on March 31, 1995 (62 FR 16565), the USDA reestablished Area No. 2 to include Chaffee County, which previously had been part of the Area No. 3 production area. The reestablishment was initiated largely due to Chaffee County's proximity to Area No. 2 and a request from a Chaffee County producer/handler. That action also reestablished Committee membership by combining Chaffee County and Saguache County as one district for the purpose of nominating a producer member to the Committee.

Although Chaffee County potato production has remained relatively static, potato production in Saguache County has in recent years increased significantly due to an increase in potato acreage. According to Committee records, Saguache County farmers harvested about 5,310,000 hundredweight of potatoes from nearly 17,000 acres during the 2001–2002 season. This is nearly double the 1985–1986 production of the 2,930,000 hundredweight of potatoes that were harvested from 8,900 acres in Saguache County. It is also noteworthy that Saguache County had about 16 percent of the total production in Area No. 2 during the 1985–1986 season compared to about 25 percent of the total during the 2001–2002 season. With two seats on the Committee, producers from Chaffee and Saguache Counties would comprise about 22 percent of the producer members on the Committee.

Arable land in Chaffee County is generally limited to a relatively small production area around the city of Salida, and the Committee continues to believe that Chaffee and Saguache Counties should remain combined as a subdivision, or nominating district, in Area No. 2. The two members from this district, as well as their respective alternates, would be nominated for membership on the Committee from all eligible producers from either or both of these two counties.

According to the Committee, there are currently 38 producers with certified seed potato production on 14,760 Area No. 2 acres. Of the 6,273,000 hundredweight of certified seed potatoes harvested in 2001–2002, Committee records indicate that 977,866 hundredweight were marketed out-of-area, and 343,223 hundredweight were planted in the San Luis Valley. Most of the balance of the total seed production was replanted into the certified seed program for multigenerational seed development. Certified seed potato shipments are currently exempt from the grade, size, maturity, and inspection requirements of § 948.386, but are subject to the order's assessment rate as established under § 948.216.

The Committee, in conjunction with the Colorado Area No. 2 potato industry, recently held a strategic planning session and identified several key issues. One of the important issues looked at by the Committee was its membership as it relates to Area No. 2 potato industry representation. Consensus among participants indicated that there would be a mutual benefit to the Committee and the industry with certified potato seed representation on the Committee. Seed potatoes are typically produced in areas separate from the major commercial fresh and processed potato production areas. This isolation is necessary to maintain the strict State of Colorado certified seed tolerances established for plant diseases. The Committee believes that the infusion of fresh ideas from this facet of the industry would provide for a new perspective on the Committee, as well as providing better service to the entire Colorado Area No. 2 potato industry.

In addition, based in part on the increase in production in Saguache County and on the significance of certified seed potato production in Area No. 2, the Committee received requests from the industry that producer representation on the Committee be increased. Finally, the Committee has recently formed several subcommittees for the purpose of providing better service to the Area No. 2 potato industry. Due to an inadequate candidate pool, the Committee has experienced problems in identifying enough committee members willing and able to serve on these subcommittees. Taking all of this into consideration, the Committee determined that the addition of two producer members and their respective alternates would not only provide better representation for Area No. 2 producers, but would also provide an increased pool of expertise on the Committee and its subcommittees.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2001–2002 marketing year, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than $5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 marketing year was $9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately $621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule would increase the number of members on the Committee from 12 members to 14 members. Specifically, this rule would increase from seven to nine the number of producers on the Committee by adding a second producer representative from Chaffee County and Saguache County, and by creating a position for a representative for certified

seed potato producers from all the counties in Area No. 2. This rule would not change the number of handler representatives on the Committee, which would remain at five. Each position would continue to have an alternate with the same qualifications as the member.

Potato production in Saguache County has increased significantly in recent years. Increased potato acreage has been the primary reason for the production increase. Colorado's Saguache County and Chaffee County comprise a nominating district within Area No. 2 and currently have one member and alternate member serving on the Committee. The Committee believes that an additional member from this area would benefit both the Committee and the industry. With certified potato seed production representing a significantly important segment of the Area No. 2 potato crop, the Committee also believes that the addition of a certified seed producer position would add a fresh perspective to its membership and would provide better representation for the San Luis Valley potato industry. Authority for this action is provided in § 948.53 of the order.

Once implemented, this rule would cause a small increase in the Committee's cost of administering the order. For example, overall costs associated with Committee members' travel to attend meetings would increase due to the additional members requiring compensation. The increased cost, however, should be offset by the non-economic benefits derived by providing a greater number of producers the chance to participate as members of the Committee, as well as the service the increased Committee expertise and diversity would provide to the San Luis Valley potato industry. Regardless, the costs associated with this rule are not expected to be disproportionately greater or less for small producers and handlers than for larger entities.

The Committee discussed alternatives to this change. In considering its goals of providing additional representation in response to the greater production in Saguache County and the significant certified seed potato production throughout the San Luis Valley, the Committee looked at various alternatives to the current method of representation. For example, the Committee considered combining the counties in Area No. 2 into fewer subdivisions, or districts, in order to keep the Committee the same size while providing for greater representation to certain districts. After considerable discussion, however, the Committee determined that the only equitable method of handling the representation problem was to add additional members and leave the current subdivisions unchanged.

This proposed rule would increase the number of member and alternate member positions on the Committee. Since the two-year Committee terms are arranged so that approximately one-half terminate each year, this action would increase by four the number of background statements requiring completion in a two-year period. It is estimated that the time needed to complete the forms by producers who are nominated to serve in the two additional member and two additional alternate member positions would be less than two minutes per response, or a total of 8 minutes, which would not substantially impact the total burden hours. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), these additional information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

The Committee's meeting was widely publicized throughout the San Luis Valley and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons the chance to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible so that the Committee can nominate members and alternate members for the two new producer positions as soon as possible. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 948.150, paragraph (a) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

Two (2) producers from Rio Grande County;

Two (2) producers from either Saguache County or Chaffee County;

One (1) producer from Conejos County;

Two (2) producers from Alamosa County;

One (1) producer from all other counties in Area No. 2;

One (1) producer representing certified seed producers in Area No. 2;

Two (2) handlers representing bulk handlers in Area No. 2;

Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

Dated: May 23, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–13519 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R– 1147

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is

seeking public comment on a proposal to require Edge and Agreement corporations and U.S. branches, agencies and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before June 30, 2003.

ADDRESSES: Comments should refer to Docket No. R–1147 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Pamela J. Johnson, Senior Anti–Money Laundering Coordinator, (202) 728–5829, or Nina A. Nichols, Counsel, Division of Banking Supervision and Regulation, (202) 452–2961; or Melinda Milenkovich, Counsel, (202) 452–3274, or Thomas Scanlon, Counsel, Legal Division, (202) 452–2594. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

In 1987, the federal bank supervisory agencies amended their respective regulations to require the banks, savings associations, and credit unions they regulated to establish and maintain procedures to assure and monitor compliance with the requirements of subchapter II of chapter 53 of Title 31, United States Code, commonly known as the ''Bank Secrecy Act,'' and the Treasury regulations promulgated thereunder.[1] The Bank Secrecy Act generally requires financial institutions to, among other things, keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. The 1987 amendments to the supervisory agencies' regulations were adopted to comply with the requirements of section 1359 of the Anti–Drug Abuse Act of 1986, Pub. L. 99–570, which required the supervisory agencies to prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and to review such procedures during the course of their examinations.

The amendments to the supervisory agencies' regulations incorporated the minimum components of a Bank Secrecy Act compliance program as determined by the supervisory agencies and as generally set forth in the Bank Secrecy Act at 31 U.S.C. 5318(h). These include: (i) a system of internal controls to assure ongoing compliance; (ii) independent testing of compliance by the institution's personnel or by an outside party; (iii) the designation of an individual or individuals responsible for coordinating and monitoring day–to–day compliance; and (iv) training for appropriate personnel.

The amendment to the Board's regulations is now codified in Regulation H at 12 CFR 208.63.[2] The provision applies to state member banks, but corresponding provisions were not included in Regulation K for branches, agencies and representative offices of foreign banks or Edge and Agreement corporations. Such financial institutions are, however, subject to the Bank Secrecy Act and the regulations promulgated thereunder, and should maintain compliance programs accordingly.

II. Proposed Bank Secrecy Act Program Requirements

The Board is proposing to amend Regulation K to require Edge and Agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act.[3]

The Board believes that the proposed regulation will not impose any material additional administrative burden for affected institutions. In supervising branches, agencies and other offices of foreign banks or Edge and Agreement corporations, the Board has, as a matter of safety and soundness, consistently expected such entities to maintain programs to ensure compliance with all applicable provisions of the Bank Secrecy Act.

Moreover, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, P.L. 107–56 (USA PATRIOT Act), amended 31 U.S.C. 5318(h) of the Bank Secrecy Act to impose a statutory requirement on all financial institutions to maintain anti–money laundering programs. The amendment to 31 U.S.C. 5318(h) was effective on April 24, 2002.

The Treasury Department issued an interim final rule under section 352 of the USA PATRIOT Act that applies to banking organizations.[4] The interim rule provides that if a financial institution is in compliance with the anti–money laundering program requirements of its federal functional regulator or self–regulatory organization, the institution will be deemed to be in compliance with the statutory and regulatory requirements of the Treasury under 31 U.S.C. 5318(h). Because branches, agencies and representative offices of foreign banks and Edge and Agreement corporations are subject to the program requirement of 5318(h) of the Bank Secrecy Act, and the Treasury regulation provides that they will be in compliance if they comply with the Board's program requirement, the proposed regulation will provide necessary clarification. The proposed regulation will clarify the existing obligations of branches, agencies, and representative offices of foreign banks and Edge and Agreement corporations under the Board's rules, section 5318(h) and Treasury's interim final rule under section 352 of the USA PATRIOT Act.

Compliance with the proposed rule will help to assure that institutions have

[1] The notice was issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration on January 27, 1987, 52 FR 2858. It was effective January 27, 1987, and required programs to be in place by April 27, 1987.

[2] The amendment was initially made to 12 CFR 208.14, but the provision was moved in subsequent changes to Regulation H.

[3] Statutory authority for the proposed rule is found in section 1359 of the Anti–Drug Abuse Act of 1986, Pub. L. 99–570, and in section 8(s)(1) of the Federal Deposit Insurance Act, as amended by section 2596(a)(2) of the Crime Control Act of 1990, Pub.L. 101–647. The latter requires the Board to, among other things, issue regulations requiring state member banks and other domestic and foreign banking organizations operating in the United States and supervised by the Board, to establish and maintain internal procedures to ensure compliance with the Bank Secrecy Act. Section 8(s)(1) of the Federal Deposit Insurance Act is made applicable to branches and agencies of foreign banks by sections 8(b)(3) and 8(b)(4).

[4] Treasury's interim final rule was published at 67 FR 21110 (April 29, 2002). The requirement for banks, savings associations, and credit unions is codified in Treasury's Bank Secrecy Act regulations at 31 C.F.R. 103.120(b).

in place policies and procedures to assure compliance with all applicable provisions of the Bank Secrecy Act, and that any deficiencies in the area of anti–money laundering, suspicious activity reporting, and customer due diligence are promptly identified and corrected. Institutions should note, however, that compliance with this requirement alone, while a potentially mitigating factor with regard to penalties or supervisory actions, is not a defense in a criminal prosecution or civil action involving a violation of the Bank Secrecy Act or regulations promulgated thereunder.

The Board seeks comment on all aspects of this proposal.

III. Regulatory Flexibility Act

The Board of Governors certifies that this proposed rule will not have significant economic impact on a substantial number of small entities. The proposal creates a uniform regulatory standard for ensuring and examining compliance with applicable law and regulation. Most institutions covered by the proposed rule, whether small or large, already have policies and procedures substantially equivalent to those required by the proposed rule. Therefore, the Board believes this proposed rule should not have a significant economic impact.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains recordkeeping requirements that are subject to the PRA. In summary, the proposed rule requires Edge and Agreement corporations and U.S. branches, agencies and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder.

The proposed rule applies only to Edge and Agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Board. The proposed rule requires each of those entities to establish a written compliance program that includes the following components: (i) A system of internal controls to assure ongoing compliance; (ii) independent testing of compliance by the institution's personnel or by an outside party; (iii) the designation of an individual or individuals responsible for coordinating and monitoring day–to–day compliance; and (iv) training for appropriate personnel. The compliance program must be approved by the board of directors, and noted in the minutes.

The Board believes that little burden is associated with the requirements for establishing a compliance program for the Bank Secrecy Act because the measures involved in the program are consistent with usual and customary business practices. In addition, the entities subject to the proposed rule already must implement procedures to comply with the requirements under the Bank Secrecy Act to file suspicious activity reports (see, e.g., 12 CFR 211.6(k)).

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this collection of information unless it displays a currently valid OMB control number. An OMB control number will be obtained.

Estimated number of financial institutions subject to the proposed rule: 520.

Estimated average annual burden for establishing the written compliance program per financial institution: 16 hours (2 business days).

Estimated total annual burden: 8,320 hours.

The Board requests comment on the recordkeeping requirements contained in this proposed rule, including how burdensome it would be for affected financial institutions to comply with these requirements. Also, the Board requests comment on whether these institutions currently maintain procedures or other aspects of a compliance program as described in the proposed rule. The Board also invites comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(2) The accuracy of the Board's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents; and

(5) Estimates of capital or start–up costs and costs of operation, maintenance, and purchases of services to implement appropriate compliance procedures.

Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments64;federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

V. Solicitation of Comments Regarding Use of ''Plain Language''

Section 722 of the Gramm–Leach–Bliley Act, P.L. 106–102, requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the proposed rule easier to understand, including answers to the following questions: (1) Has the Board organized the material in an effective manner? If not, how could the material be better organized? (2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated? (3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 211 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 211––INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 et seq.; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318

2. In §211.5 add new paragraph (m)(1) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) *Establishment of Compliance Program.* Each Edge corporation and each Agreement corporation shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the

continued administration of a program reasonably designed to assure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

* * * * *

3. In §211.24 revise the section heading and add new paragraph (j)(1) to read as follows:

§ 211.24 Approval of officers of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority; reports of crimes and suspected crimes; government securities sales practices.

* * * * *

(j) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) *Establishment of Compliance Program.* Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States shall, in accordance with the provisions of § 208.63 of the Board's Regulation H, 12 CFR 208.63, develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

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By order of the Board of Governors of the Federal Reserve System, May 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–13371 Filed 5–29–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 94–18–04 R1, which currently applies to all Univair Aircraft Corporation (Univair) Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. AD 94–18–04 R1 requires installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structural components for corrosion, and repairing any corroded wing outer panel structural component. Several reports of corrosion in the outer wing panels of the affected airplanes prompted that AD. Additional reports of corrosion on airplanes in compliance with AD 94–18–04 R1 have caused the Federal Aviation Administration (FAA) to propose repetitive inspections. This proposed AD would make the inspection required in AD 94–18–04 R1 repetitive. The actions specified by this proposed AD are intended to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

DATES: The FAA must receive any comments on this proposed rule on or before July 28, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–58–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–58–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Maintenance inspection procedures did not allow for thorough inspection of the wing structure on Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. This caused us to issue AD 94–18–04, Amendment 39–9017 (59 FR 43727, August 25, 1994) to require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found.

After AD 94–18–04 was issued, Univair revised Service Bulletin No. 29 to the Revision B level. Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, changed the dimension of one of the openings to position it symmetrically between two ribs; and clarified the dimensioning system utilized in placement of the inspection openings. Univair SB No. 29, Revision B, also presented further discussion of the service difficulties encountered on the referenced subject and clarified the intent of the preliminary inspection procedure that may be accomplished prior to the installation of the inspection openings.

This caused us to issue AD 94–18–04 R1, Amendment 39–9173 (60 FR 62321, March 14, 1995).

What Has Happened Since AD 94–18–04 R1 To Initiate This Proposed Action?

The FAA has received additional reports of corrosion damage in the wing outer panel structural components continuing to go undetected. Univair has revised Service Bulletin No. 29 to the Revision C level, dated July 8, 1999. This revision changes the one-time inspection of the wing outer panel structural components for corrosion to a repetitive inspection.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10 airplanes of the same type design;

—The inspection specified in the previously-referenced service information and AD 94–18–04 R1 should be made repetitive on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 94–18–04 R1 with a new AD that would retain the actions required in AD 94–18–04 R1 and make the one-time inspection of the wing outer panel structural components for corrosion a repetitive inspection.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,600 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed installation of the inspection openings:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$67	$427

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not applicable	$120	$120 × 2,600 = $312,000

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 12 calendar months after the effective date of this AD.''

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this

proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 94–18–04 R1, Amendment 39–9173 (60 FR 62321, March 14, 1995), and by adding a new AD to read as follows:

Univair Aircraft Corporation: Docket No. 2002–CE–58–AD; Supersedes AD 94–18–04 R1, Amendment 39–9173.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Models	Serial No.
Alon A–2 and A2–A	All.
ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G.	All.
Forney F–1 and F–1A	All.
Mooney M10	All.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing damage caused by a corroded wing outer panel structural component, which, if not detected and corrected, could progress to the point of structural failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Install inspection openings in the outer wing panels and inspect the wing outer panel internal structural components for corrosion and unrepaired corrosion damage.	Within the next 12 calendar months after March 24, 1995 (the effective date of AD 94–18–04 R1), unless already accomplished.	In accordance with Univair Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(2) If corrosion or corrosion damage is found during the inspection required in paragraph (d)(1) of this AD, repair or replace components of the wing outer panel structure.	Repair or replace prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, the applicable maintenance manual, and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(3) Repetitively inspect the wing outer panel internal structural components for corrosion and unrepaired corrosion damage.	Initially inspect within the next 6 calendar months after the effective date of this AD unless the wing outer panel internal structure had been inspected for corrosion within the previous 6 calendar months immediately prior to the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 12 months after the last inspection.	In accordance with Univair Aircraft Corporation Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(4) At any time corrosion or corrosion damage is found, repair or replace components of the wing outer panel structure.	Repair or replace prior to further flight after the inspection in which the corrosion or corrosion damage is found. Continue with the repetitive inspection requirements of this AD.	In accordance with Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, and Advisory Circular 43–4A, Corrosion Control for Aircraft.

Note 1: The compliance times specified in Univair Aircraft Corporation Service Bulletin No. 29, Revision B, dated January 2, 1995, or Univair Service Bulletin No. 29, Revision C, dated July 8, 1999, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Denver Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

(2) Alternative methods of compliance approved for the inspection required in AD 94–18–04 R1, which is superseded by this

AD, are approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 94–18–04 R1, Amendment 39–9173.

Issued in Kansas City, Missouri, on May 23, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–13511 Filed 5–29–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 2002–FAA–14912; Airspace Docket No. 03–AWP–4]

RIN 2120–AA66

Proposed Amendment of Restricted Area R–2301E Ajo East, AZ; and R–2304, and 2305 Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the designated time of use for Restricted Area 2301E Ajo East, AZ, (R–2301E); and R–2304 and R–2305, Gila Bend, AZ. Increased training requirements at Luke Air Force Base (AFB) have resulted in a continued need for restricted airspace usage up to 2400 hours in these areas. This proposed modification of time of use would not change the current boundaries or activities conducted in the airspace areas.

DATES: Comments must be received on or before July 14, 2003.

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 ''FAA Docket No. FAA–2002–14912 and Airspace Docket No. 03–AWP–4'' at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed 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 action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2002–14912 and Airspace Docket No. 03–AWP–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/nara.*

You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office (see address above) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

Additionally, any person may obtain a copy of this action by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this action. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

Restricted airspace areas in the vicinity of Luke AFB, AZ, date back to the 1960's. The current designated time of use for these restricted areas was based on past use. An FAA review of airspace requirements for Luke AFB in January of this year showed the operating hours of the restricted areas were being routinely extended by the issuance of a Notice to Airmen (NOTAM). As a result of the review, the United States Air Force (USAF) requested that the FAA take action to change the time of use for these areas to support increased training requirements necessitating a regular need for restricted airspace availability until 2400 hours.

The Proposal

Based on the review and the USAF request, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to amend the designated time of use for R–2301, R–2304, and R–2305. Specifically, this action proposes to change the designated time of use for R–2301E from ''Monday-Friday, 0630–2230 local time; other times by NOTAM,'' to ''Daily, 0630 to 2400 local time; other times by NOTAM;'' R–2304 from ''0700–2200 local time; other times by NOTAM,'' to ''Monday-Saturday, 0630–2400 local time; other times by NOTAM;'' and R–2305 from ''0700–2300 local time; other times by NOTAM,'' to ''Monday-Saturday, 0630–2400 local time; other times by NOTAM.'' Increased training requirements at Luke AFB have resulted in a continued need for restricted airspace availability until 2400 hours. This proposed modification would not change the current boundaries or activities conducted in the airspace area.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished

in FAA Order 7400.8K dated September 26, 2002.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

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R–2301E, Ajo East AZ [Amended]

By removing ''Time of designation. Monday–Friday, 0630–2230 local time; other times by NOTAM,'' and substituting ''Time of designation. Daily, 0630–2400 local time; other times by NOTAM.''

R–2304, Gila Bend AZ [Amended]

By removing ''Time of designation. 0700–2200 local time; other times by NOTAM,'' and substituting ''Time of designation. Monday–Saturday, 0630–2400 local time; other times by NOTAM.''

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R–2305, Gila Bend AZ [Amended]

By removing ''Time of designation. 0700–2300 local time; other times by NOTAM,'' and substituting ''Time of designation. Monday–Saturday, 0630–2400 local time; other times by NOTAM.''

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Issued in Washington, DC, on May 15, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–13037 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 2003–P–021]

RIN 0651–AB61

January 2004 Revision of Patent Cooperation Treaty Application Procedure

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to amend the rules of practice to conform them to certain amendments made to the Regulations under the Patent Cooperation Treaty (PCT) that will take effect on January 1, 2004. These amendments will result in the addition of a written opinion in PCT chapter I, as well as a simplification of PCT designations and the PCT fee structure. In addition, the Office is proposing to adjust the transmittal, search, and international preliminary examination fees for international applications filed under the PCT to be more closely aligned with the actual average costs of processing a PCT application and conducting a PCT search and international preliminary examination under the new process.

COMMENT DEADLINE DATE: To be ensured of consideration, written comments must be received on or before June 30, 2003. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message via the Internet addressed to *AB61.Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (703) 308–6459, marked to the attention of Mr. Richard Cole. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would appreciate the comments to be electronically filed on a DOS formatted 3½ inch disk with a paper copy of the comments.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Richard R. Cole, Legal Examiner, Office of PCT Legal Administration (OPCTLA) directly by telephone at (703) 305–6639, or by facsimile at (703) 308–6459.

SUPPLEMENTARY INFORMATION: During the September–October 2002 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted various amendments to the Regulations under the PCT that enter into force on January 1, 2004. The amended PCT Regulations were published in the PCT Gazette of December 5, 2002 (49/2002), in section IV, at pages 25004–25061. The purposes of these amendments are to: (1) Improve coordination of international search (chapter I of the PCT) and international preliminary examination (chapter II of the PCT) through the provision of an enhanced international search and preliminary examination system; (2) simplify the PCT by changing the concept and operation of the designation system and the fee system; and (3) simplify signature and other filing requirements.

Enhanced International Search and Preliminary Examination System: Under the enhanced international search and preliminary examination system, the written opinion currently established during the chapter II procedure by the International Preliminary Examining Authority (IPEA) has been added to the chapter I procedure. Accordingly, the International Searching Authority (ISA) will be responsible for establishing a preliminary and non-binding written opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. In the event that a Demand for international preliminary examination is timely filed by applicant without a PCT Article 34 amendment,

the written opinion of the ISA will become the written opinion of the IPEA. If a Demand is not timely filed, the written opinion of the ISA will form the basis for the issuance, by the International Bureau (IB) on behalf of the ISA, of an ''International Preliminary Report on Patentability (chapter I of the Patent Cooperation Treaty)'' (''IPRP''), which will be communicated to all designated Offices and made available for public inspection after the expiration of 30 months from the priority date.

This revised system will result in a slight increase in the workload on the ISA, but should result in a substantial decrease in the workload on the IPEA. In addition, smaller Offices will benefit by the availability of an international preliminary report on patentability equivalent to the chapter II international preliminary examination report (*i.e.*, the IPRP) even if no Demand has been filed.

Under the revised system, the time limit for filing a Demand for international preliminary examination has changed. Specifically, the Demand must be filed within the later of: (1) Three months from issuance of the international search report and the written opinion of the ISA (or, if a search cannot be made, of the declaration under Article 17.2(a)); or (2) 22 months from the priority date. *See* PCT rule 54*bis*.1(a). Any Demand made after the expiration of this time limit will be considered as if it had not been submitted. *See* PCT rule 54*bis*.1(b). Any arguments or amendments in response to the written opinion of the ISA must be submitted within the time limit for filing the Demand to ensure consideration by the IPEA. It is noted that applicants may still desire to file the Demand prior to the expiration of 19 months of the priority date in order to delay entry into the national stage for those few remaining Contracting States that have taken a reservation to the 30-month time limit in Article 22(1).

As in current PCT chapter II procedures, the IPEA will still establish an international preliminary examination report, though the report will now bear the title ''International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty).'' This report will be established within the applicable time limit under PCT rule 69 (usually within 28 months from the priority date).

Under the revised system, payment of the international preliminary examination fee and handling fee is not required until the later of one month from the filing of the Demand or 22 months from the priority date. *See* PCT rules 57.3(a) and 58.1(b). However, where the IPEA and the ISA are the same and the IPEA wishes to start examination at the same time as the international search, the IPEA may require that the examination and handling fees be paid within one month of an invitation by the IPEA to pay such fees. *See* PCT rule 57.3(c).

Automatic Indication of All Designations Possible under the PCT; Relaxed Signature and other Filing Requirements; Simplified Fee System: Under the amendments to the Regulations of the PCT, upon filing an international application, applicant will obtain automatic and all-inclusive coverage of all designations available under the PCT, including all kinds of protection as well as both national and regional patent protection. *See* PCT rule 4.9. Similarly, the mere filing of a Demand will constitute the election of all designated States. *See* PCT rule 53.7. Thus, applicants need not, at the time of filing the international application, specifically designate individual Contracting States, or choose certain kinds of protection or indicate expressly whether national or regional protection is sought. Such matters will be resolved in the national phase.

This automatic and all-inclusive designation system overcomes a current pitfall for applicants who have inadvertently omitted specific designations upon filing the international application and such designations were not, or could not be, timely confirmed under PCT rule 4.9(c). For example, if the original international application papers did not contain at least one designation, an international filing date could not be accorded as of the initial receipt date of the application papers. *See* PCT Article 11(1)(iii)(b). Furthermore, even in those applications containing at least one designation, PCT rule 4.9(b) required that any additional States and/or additional kinds of protection be confirmed by the submission of a written notice, accompanied by payment of the appropriate confirmation fee, within a relatively short time period (*i.e.*, 15 months from the priority date). This time period was frequently overlooked by applicants. Under the new system of automatic designations/elections, the current procedures for precautionary designations and later elections become unnecessary and have been eliminated from the PCT Rules. This will reduce the workload on the PCT Receiving Office (RO) and IPEA by eliminating processing of precautionary designations and later elections, as well as petitions relating to omitted designations.

As a further benefit of the automatic designation system is the simplification of the PCT fee system. Under the current PCT fee structure, both a ''basic'' fee and a ''designation'' fee are required. Moreover, these fees are due at different times in different amounts depending on when they are paid. Under the new system, these fees have been eliminated in favor of a single international filing fee (comprised of two fee components, a first fee component for up to 30 sheets of paper and a second fee component for sheets of paper in excess of 30) due at one time.

As a consequence of the automatic designation system, applicant/inventors will have to be named in the international application. To alleviate hardships with regard to obtaining signatures of all the applicants named on the Request, PCT rule 26 has been amended to provide that, for purposes of Article 14(a)(i), the international application will be considered as signed in accordance with the PCT Regulations if the Request has been signed by at least one applicant. *See* PCT rule 26.2*bis*(a). In addition, if there is more than one applicant, PCT rule 26.2*bis*(b) provides that, for purposes of PCT Article 14(1)(a)(ii), it is sufficient that the identifying information (*i.e.*, address, residence and nationality) be provided for only one applicant who is entitled under PCT rule 19.1 to file the international application with the RO. This means that for purposes of filing an international application with the United States Receiving Office (RO/US) as the competent RO, this information must be provided with respect to at least one applicant who is a citizen or resident of the United States. Notwithstanding the amendments to PCT rule 26, a designated/elected Office may still require applicants to furnish, during the national stage, confirmation of the international application by the signature of any applicant who has not signed the Request and any missing identifying information. *See* PCT rule 51*bis*.1(a).

PCT rule 90.4 has been revised to permit the RO, ISA, or IPEA to waive the requirement for a power of attorney, except in instances of applicant initiated withdrawals under PCT rule 90*bis*.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, part 1, is proposed to be amended as follows:

Section 1.14: Section 1.14(i)(1)(ii) is proposed to be amended to exclude members of the public from obtaining a copy of the written opinion of the United States International Searching

Authority (ISA/US) until the expiration of thirty months from the priority date of the international application. Under PCT rule 44*ter*.1 (as amended), the ISA is not permitted to allow access to the written opinion of the ISA before the expiration of 30 months from the priority date unless authorized by the applicant.

Section 1.413: Section 1.413(c) is proposed to be amended to reflect the additional major function of the ISA/US of preparing and transmitting written opinions.

Section 1.421: Section 1.421(b) is proposed to be amended to remove reference to § 1.425, which will be removed. Under PCT rule 26.2*bis*(a) (as amended), the international application will be considered to satisfy the signature requirement for purposes of PCT Article 14(1)(a)(i) if the request is signed by at least one applicant (except that all of the applicants' signatures will still be required for withdrawals, *see* discussion of § 1.421(g)). Accordingly, the current requirement in § 1.425 that the failure of an inventor to sign the request in an international application designating the United States will only be excused where the inventor could not be found or reached after diligent effort or refused to sign the request will no longer be applicable. Section 1.421(b) is also proposed to be amended to include the requirement of § 1.424 that joint inventors must jointly apply for an international application. Section 1.424 is proposed to be removed (*see* discussion of § 1.424).

Section 1.421(c) is proposed to be amended as a consequence of the change to PCT rule 4.9, as the United States will always be designated upon filing of an international application.

Section 1.421(d) is proposed to be amended to reflect the change to PCT rule 90.4(d) permitting the RO to waive the requirement for a separate power of attorney.

Section 1.421(f) is proposed to be amended to clarify that for purposes of requests under PCT rule 92*bis* to effect a change in an indication concerning the applicant, agent or common representative, such requests may be required to be signed by all applicants.

Section 1.421(g) is proposed to be amended to remove the text of PCT rule 92*bis* as unnecessary and to clarify that for purposes of withdrawals under PCT rule 90*bis* of the international application, designations, priority claim, Demand or elections, the request for withdrawal must be signed by all applicants. Furthermore, where the request for withdrawal is signed by an attorney, agent, or common representative, a power of attorney from the applicants appointing that attorney, agent or common representative will be required. This proposed clarification is consistent with PCT rule 90.4(e) (as amended), which prohibits the RO, ISA, IPEA, and IB from waiving the separate power of attorney requirement in cases of withdrawals under rule 90*bis*. An exception to this signature requirement is made in cases where an inventor cannot be found or reached after diligent effort. *See* PCT rule 90*bis*.5(b).

Section 1.424: This section is proposed to be removed. The requirement in 1.424 regarding the naming of joint inventors in international applications will be moved to § 1.421(b). The further requirement relating to signature requirements of joint inventors, including reference to § 1.425, will no longer be applicable (*see* discussion of § 1.421(b)).

Section 1.425: This section is proposed to be removed (*see* discussion of § 1.421(b)).

Section 1.431: Section 1.431(b)(3) is proposed to be amended to remove reference to 1.424, which is proposed to be removed. Sections 1.431(c) and (d) are proposed to be amended to reflect the new fee structure applicable to international applications under revised PCT rule 15. Specifically, the international ''basic fee'' and ''designation fee'' have been combined into a single ''international filing fee.'' In addition, the late payment fee provision of § 1.431(c)(1) is proposed to be amended as a consequence of this new fee structure, consistent with amended PCT rule 16*bis*.2.

Section 1.432: Section 1.432 is amended to reflect the change to PCT rule 4.9, which provides that the filing of the request shall constitute: (1) The designation of all Contracting States that are bound by the PCT on the international filing date; (2) an indication that for those States for which PCT Articles 43 or 44 apply, the filing of the request constitutes an indication for the grant of every kind of protection which is available by way of the designation of that State; and (3) an indication that the international application is, for those States to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent. As a consequence of the ''automatic'' designation system provided under revised PCT rule 4.9, the procedure under former PCT rule 4.9(b) and (c) regarding confirmation of precautionary designations has been eliminated from that rule, and therefore, is proposed to be removed from § 1.432.

Section 1.434: Section 1.434(d) is proposed to be amended to remove the requirement that international applications designating the United States must include the address and the signature of the inventor except as provided by §§ 1.421(d), 1.422, 1.423 and 1.425. Under PCT rule 26.2*bis* (as amended), if there is more than one applicant, it is sufficient that the request is signed by only one of them, and that the address is provided with respect to one of the applicants who is entitled, in accordance with rule 19.1, to file the international application with the RO. Section 1.434(d)(3) is also proposed to be redesignated as new § 1.434(e) for clarity.

Section 1.445: Section 1.445(a)(1) is proposed to be amended to increase the transmittal fee from $240.00 to $300.00. 35 U.S.C. 376(b) authorizes the Office to (*inter alia*) prescribe the transmittal fee, search fee, supplemental search fee, and preliminary examination fee for PCT international applications. This transmittal fee amount more accurately reflects the Office's actual average costs of processing international applications, and is also consistent with the filing fee for applications under 35 U.S.C. 111(a) proposed by the Office in the 21st Century Strategic Plan (information concerning the Office's 21st Century Strategic Plan is available on the Office's Internet Web site *www.uspto.gov*).

Section 1.445(a)(2)(i) is proposed to be amended to reduce the search fee charged by the ISA/US where there is a corresponding prior U.S. application filed under 35 U.S.C. 111(a) from $450 to $300. Section 1.445(a)(2)(i) is also proposed to be amended to clarify the conditions for obtaining benefit of the reduced search fee where there is such a prior corresponding application. Pursuant to PCT rule 42.1, the ISA/US has, in most cases, only three months to establish the International Search Report. In order for the ISA/US to be able to utilize the benefits of a search conducted in a prior corresponding application filed under 35 U.S.C. 111(a), the Office must be informed of the prior corresponding application in sufficient time and in such manner so as to permit the Office to utilize the search and examination conducted in the prior application. Accordingly, § 1.445(a)(2)(i) is proposed to be amended to require applicants to timely furnish adequate identifying information of the prior U.S. application in order to qualify for the lower search fee. Specifically, applicant must identify the prior nonprovisional application by U.S. application number upon filing the international application, if such number is known. If

such number is not known, then applicant must identify the prior application by filing date, title, and name of applicant (and preferably the application docket number) so that the Office will be able to identify the prior application.

Section 1.445(a)(2)(ii) is proposed to be amended to increase the search fee charged by the ISA/US in situations not covered by § 1.445(a)(2)(i) from $700 to $1,000. This search fee amount more accurately reflects the Office's actual average costs of searching international applications in situations not covered by § 1.445(a)(2)(i). This search fee amount is higher than the search fee amount for applications under 35 U.S.C. 111(a) as proposed by the Administration because of additional costs associated with both searching international applications and the preparation and transmittal of a written opinion of the ISA. Additionally, international applications must be searched (and examined) under the PCT unity of invention standard, where applications under 35 U.S.C. 111(a) are searched (and examined) under the restriction standard set forth in 35 U.S.C. 121. Moreover, the search fee set forth in § 1.445(a)(2)(i) must also cover preparation of a written opinion (the ''International Preliminary Report on Patentability (Chapter I of the Patent Cooperation Treaty)'' (''IPRP'')) under the revised system.

In addition, the fee charged by the ISA/US for searching an additional invention is proposed to be increased from $210 to $1,000. This amount more accurately reflects the Office's actual average costs of searching and examining additional inventions. In this regard, it is noted that the search fee and the supplemental search fee charged by every other international searching authority are the same (except for the ISA/JP, which charges a supplemental search fee that is only slightly lower than the search fee).

Section 1.445(a)(4) is proposed to be deleted, as confirmation fees will no longer be applicable.

Section 1.445(b) is amended to reflect the combining of the basic and designation fees into a single ''international filing fee''.

Section 1.455: Section 1.455(b) is proposed to be amended to be consistent with PCT rule 90.4 as it relates to the manner of appointment of agent, attorney or common representative.

Section 1.480: Section 1.480(a) is proposed to be amended to reflect the new time limits in PCT rule 57.3 and 58.2 for submitting the handling and preliminary examination fees.

Section 1.480(d) is proposed to be added, consistent with PCT rule 53.7 (as amended), to provide that the filing of a Demand shall constitute the election of all Contracting States that are designated and bound by chapter II of the Treaty on the international filing date. Accordingly, it will no longer be necessary to specify in the Demand those States that are elected.

Section 1.480(e) is proposed to be added to provide that any Demand filed after the expiration of the applicable time limit in PCT rule 54*bis*.1(a) shall be considered as if it had not been submitted. *See* PCT rule 54*bis*.1(b) (as amended).

Section 1.481: Section 1.481(a) is proposed to be amended to provide that the handling fee and preliminary examination fee that are due are those fees in effect on the date of payment of the handling and preliminary examination fees. *See* PCT rules 57.3(d) and 58.1(b).

Section 1.482: Section 1.482(a)(1) is proposed to be amended to increase the preliminary examination fee charged by the IPEA/US from $490 to $600 if the international search fee was paid to the United States Patent and Trademark Office as an ISA (the preliminary examination fee charged by the IPEA/US if the international search fee was not paid to the United States Patent and Trademark Office as an ISA will remain at $750). This proposed increase is necessary to cover the additional cost associated with conducting the preliminary examination by the IPEA/US. Under the enhanced international search and preliminary examination system, a written opinion will be established by the ISA and sent to applicant. As a result of the change to the time limit in PCT Article 22(1), it is no longer necessary, in most cases, to file a Demand in order to delay entry into the national stage to thirty months from the priority date. In view of these changes, it is anticipated the majority of applicants filing a Demand under the revised system will no longer be doing so to simply further delay entry into the national stage, but rather will be doing so to obtain a positive ''International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty)'' by the IPEA. As such applicant will need to file one or more amendments under PCT Article 34 in the international application to overcome any negative determinations set forth in the written opinion by the ISA, the Office's costs of examining each international application as the US/IPEA for applicants who file a Demand under the revised system will increase.

For the same reason, as well as reasons set forth with regard to the increase in the supplemental search fee under § 1.445(a)(3), § 1.482(a)(2) is proposed to be amended to increase the additional preliminary examination fee for examining additional inventions to $600 (regardless of whether the international search fee was paid to the United States Patent and Trademark Office as an ISA).

Section 1.482(b) is proposed to be amended to refer to revised PCT rule 57 as it relates to handling fee requirements.

Section 1.484: Section 1.484(b) is proposed to be amended to refer to revised PCT rule 69.1 as to when the IPEA/US may start international preliminary examination. PCT rule 69.1 was revised to prohibit the IPEA from starting preliminary examination until it is in possession of, *inter alia*, the written opinion of the ISA. PCT rule 69.1 provides for two exceptions to this requirement. Both exceptions apply when the IPEA and the ISA for the international application are the same authority. The first exception permits the IPEA to start examination at the same time as the international search, subject to certain limitations. *See* PCT rule 69.1(b). The second exception occurs when the ISA considers the conditions under PCT Article 34(2)(c)(i) to (iii) to be fulfilled. In such cases, a written opinion by the ISA need not be established. *See* PCT rule 69.1(b)*bis*.

Sections 1.484(e) through (g) are proposed to be redesignated as §§ 1.484(g) through (i), respectively. Proposed § 1.484(e) now provides, consistent with PCT rule 66.1*bis*, that the written opinion of the ISA shall be considered to be the written opinion of the IPEA/US.

Proposed § 1.484(f) now provides that the IPEA may establish further written opinions, subject to the conditions specified in § 1.484(d). Establishment of additional written opinions by the IPEA is provided for in PCT rule 66.4(a).

Section 1.484(g) is proposed to be amended as a consequence of the amendment to § 1.484(f).

Section 1.484(h) is proposed to be amended to provide clarification regarding conducting personal and telephonic interviews with the examiner under the revised system.

Rulemaking Considerations

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant

impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The changes proposed in this notice primarily implement corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations which become effective on January 1, 2004. The amendments to the PCT Regulations will simplify the PCT application process and fee structure, and as such, will benefit all patent applicants (including small entities) using the PCT system.

The proposed changes to the PCT international stage fees are to adjust these fees to be in alignment with the actual average costs of conducting a PCT search and international preliminary examination under the new process. This realignment does result in a proposed increase in the search fee for applicants who do not have a corresponding U.S. application under 35 U.S.C. 111(a) in which the filing fee was paid, a proposed increase in the supplemental search fee, and a proposed increase in the preliminary examination fee. However, as PCT Article 22 was amended (effective April 1, 2002) to extend its time limit for entering the national stage to 30 months from the priority date of the PCT application, PCT applicants are no longer required to file a Demand for preliminary examination under PCT Article 31 (and pay the preliminary examination fee) in order to delay commencement of the national stage until 30 months from the priority date. *See Revision of the Time Limit for National Stage Commencement in the United States for Patent Cooperation Treaty Applications*, 67 FR 520 (Jan. 4, 2002), 1254 *Off. Gaz. Pat. Office* 204 (Jan. 29, 2002). In addition, the International Searching Authority will now be providing a written opinion as part of the PCT Chapter I processing. Thus, any PCT applicant (including a small entity) with a corresponding U.S. application under 35 U.S.C. 111(a) in which the filing fee was paid will pay as little as $600 (a transmittal fee of $300 and a search fee of $300) to obtain the benefits for which it was previously necessary to pay $1,180 (a transmittal fee of $240 and a search fee of $450, and a preliminary examination fee of $490), and any PCT applicant (including a small entity) without a corresponding U.S. application under 35 U.S.C. 111(a) (*e.g.*, an applicant with no corresponding U.S. application, or only a corresponding U.S. provisional application under 35 U.S.C. 111(b)) will still pay only $1,300 (a transmittal fee of $300 and a search fee of $1,000) to obtain the benefits for which it was previously necessary to pay $1,430 (a transmittal fee of $240 and a search fee of $700, and a preliminary examination fee of $490).

Some PCT applicants will still file a Demand for preliminary examination under the revised PCT system to obtain a positive ''International Preliminary Report on Patentability (Chapter II of the Patent Cooperation Treaty)'' by the IPEA and thus expedite the national examination process. A PCT applicant (including a small entity) without a corresponding U.S. application under 35 U.S.C. 111(a) who still wishes to file a Demand for preliminary examination under the revised PCT system will pay $1,900 (a transmittal fee of $300, a search fee of $1,000, and a preliminary examination fee of $600), where it was previously necessary to pay only $1,430 (a transmittal fee of $240 and a search fee of $700, and a preliminary examination fee of $490), for an increase of $470 in fees. This increase is insignificant in comparison to the cost (for any business entity) of obtaining foreign patent protection. *See International Trade: Federal Action Needed to help Small Businesses Address Foreign Patent Challenges*, GAO–02–789 at 2 (July 2002) (noting that extending patent protection to nine other countries could cost between $160,000 and $330,000).

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This proposed rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this proposed rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0021 and 0651–0031. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of the information collection is shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.

Type of Review: Approved through December of 2003.

Affected Public: Individuals or households, business or other for-profit institutions, Federal agencies or employees, not-for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 331,288.

Estimated Time Per Response: Between 15 minutes and 4 hours.

Estimated Total Annual Burden Hours: 401,083.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A/08B/21/22/23/24/25/26/27/30/31/32/35/37/36/42/43/61 61/PCT/62/63/64 64/PCT/67/68/91/92/96/97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B.

Type of Review: Currently under review.

Affected Public: Individuals or households, State or local governments, farms, business or other for-profit institutions, not-for-profit institutions, small businesses or organizations, and Federal government.

Estimated Number of Respondents: 2,208,339.

Estimated Time Per Response: 1 minute 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 830,629 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under

§ 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.14 is amended by revising paragraph (i)(1)(ii) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(i) * * *

(1) * * *

(ii) With respect to the Search Copy, the U.S. acted as the International Searching Authority, except for the written opinion of the International Search Authority which shall not be available until the expiration of thirty months from the priority date; or

* * * * *

3. Section 1.413 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.413 The United States International Searching Authority.

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Searching Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Director, in accordance with agreement between the Patent and Trademark Office and the International Bureau (PCT Art. 16(3)(b)).

* * * * *

(c) The major functions of the International Searching Authority include:

(1) Approving or establishing the title and abstract;

(2) Considering the matter of unity of invention;

(3) Conducting international and international-type searches and preparing international and international-type search reports (PCT Art. 15, 17 and 18, and PCT rules 25, 33 to 45 and 47), and issuing declarations that no international search report will be established (PCT Article 17(2)(a));

(4) Preparing written opinions of the International Searching Authority in accordance with PCT Rule 43*bis* (when necessary); and

(5) Transmitting the international search report and the written opinion of the International Searching Authority to the applicant and the International Bureau.

4. Section 1.421 is amended by revising paragraphs (b) through (g) as follows:

§ 1.421 Applicant for international application.

* * * * *

(b) Although the United States Receiving Office will accept international applications filed by any resident or national of the United States of America for international processing, for the purposes of the designation of the United States an international application must be filed, and will be accepted by the Patent and Trademark Office for the national stage only if filed, by the inventor or as provided in §§ 1.422 or 1.423. Joint inventors must jointly apply for an international application.

(c) For the purposes of designations other than the United States, international applications may be filed by the assignee or owner.

(d) A registered attorney or agent of the applicant may sign the international application Request and file the international application for the applicant. A separate power of attorney from each applicant may be required.

(e) Any indication of different applicants for the purpose of different Designated Offices must be shown on the Request portion of the international application.

(f) Requests for changes in the indications concerning the applicant, agent, or common representative of an international application shall be made in accordance with PCT Rule 92*bis* and may be required to be signed by all applicants.

(g) Requests for withdrawals of the international application, designations, priority claims, the Demand, or elections shall be made in accordance with PCT Rule 90*bis* and must be signed by all applicants. A separate power of attorney from the applicants will be required for the purposes of any request for a withdrawal in accordance with PCT Rule 90bis which is not signed by all applicants. The submission of a separate power of attorney may be excused upon the request of another applicant where one or more inventors cannot be found or reached after diligent effort. Such a request must be accompanied by a statement explaining to the satisfaction of the Director the lack of the signature concerned.

§ 1.424 [Removed]

5. Section 1.424 is removed.

§ 1.425 [Removed]

6. Section 1.425 is removed.

7. Section 1.431 is amended by revising paragraphs (b)(3), (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(b) * * *

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

(iii) The name of the applicant, as prescribed (note §§ 1.421–1.423);

(iv) A part which on the face of it appears to be a description; and

(v) A part which on the face of it appears to be a claim.

(c) Payment of the international filing fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by

paragraph (b) of this section are deposited or within one month thereafter. The international filing, transmittal, and search fee payable is the international filing, transmittal, and search fee in effect on the receipt date of the international application.

(1) If the international filing, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency which imposes a late payment fee, applicant will be notified and given one month within which to pay the deficient fees plus the late payment fee. Subject to paragraph (c)(2) of this section, the late payment fee will be equal to the greater of:

(i) Fifty percent of the amount of the deficient fees; or

(ii) An amount equal to the transmittal fee;

(2) The late payment fee shall not exceed an amount equal to the 25% of the international filing fee not taking into account any fee for each sheet of the international application in excess of thirty sheets (PCT Rule 16*bis*).

(3) The one-month time limit set pursuant to paragraph (c) of this section to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the international filing fee, the search fee, and the late payment fee pursuant to paragraph (c) of this section is not timely made in accordance with PCT Rule 16*bis*.1(e), the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

8. Section 1.432 is revised to read as follows:

§ 1.432 Designation of States by filing an international application.

The filing of an international application request shall constitute:

(a) The designation of all Contracting States that are bound by the Treaty on the international filing date;

(b) An indication that the international application is, in respect of each designated State to which PCT Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State; and

(c) An indication that the international application is, in respect of each designated State to which PCT Article 45(1) applies, for the grant of a regional patent and also, unless PCT Article 45(2) applies, a national patent.

9. Section 1.434 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1.434 The request.

* * * * *

(d) For the purposes of the designation of the United States of America, an international application shall include:

(1) The name of the inventor; and

(2) A reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed.

(e) An international application may also include in the Request a declaration of the inventors as provided for in PCT Rule 4.17(iv).

10. Section 1.445 is revised to read follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$300.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) If a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under § 1.16(a) has been filed and the corresponding prior United States National application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—$300.00

(ii) For all situations not provided for in paragraph (a)(2)(i) of this section—$1000.00

(3) A supplemental search fee when required, per additional invention—$1000.00

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

(b) The international filing fee shall be as prescribed in PCT Rule 15.

11. Section 1.455 is amended by revising paragraph (b) to read as follows:

§ 1.455 Representation in international applications.

* * * * *

(b) Appointment of an agent, attorney or common representative (PCT Rule 4.8) must be effected either in the Request form, signed by applicant, in the Demand form, signed by applicant, or in a separate power of attorney submitted either to the United States Receiving Office or to the International Bureau.

* * * * *

12. Section 1.480 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 1.480 Demand for international preliminary examination.

(a) On the filing of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees have been paid, the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due within the applicable time limit set forth in PCT Rule 57.3.

* * * * *

(d) The filing of a Demand shall constitute the election of all Contracting States which are designated and are bound by Chapter II of the Treaty on the international filing date (PCT Rule 53.7).

(e) Any Demand filed after the expiration of the applicable time limit set forth in PCT Rule 54*bis*.1(a) shall be considered as if it had not been submitted (PCT Rule 54*bis*.1(b)).

13. Section 1.481 is amended by revising paragraph (a) to read as follows:

§ 1.481 Payment of international preliminary examination fees.

(a) The handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3. The handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of payment.

(1) If the handling and preliminary examination fees are not paid within the time period set in PCT Rule 57.3, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(i) Fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee; or

(ii) An amount equal to the handling fee (PCT Rule 58*bis*.2).

(2) The one-month time limit set in this paragraph to pay deficient fees may not be extended.

* * * * *

14. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination

are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority—$600.00

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office—$750.00

(2) An additional preliminary examination fee when required, per additional invention—$600.00

(b) The handling fee is due on filing the Demand and shall be as prescribed in PCT Rule 57.

15. Section 1.484 is amended by revising paragraphs (b), (e) through (g) and adding paragraphs (h) and (i) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin in accordance with PCT Rule 69.1.

* * * * *

(e) The written opinion established by the International Searching Authority under PCT Rule 43*bis*.1 shall be considered to be a written opinion of the United States International Preliminary Examining Authority for the purposes of paragraph (d) of this section.

(f) The International Preliminary Examining Authority may establish further written opinions under paragraph (d) of this section.

(g) If no written opinion under paragraph (d) of this section is necessary, or if no further written opinion under paragraph (f) of this section is to be established, or after any written opinion and the reply thereto or the expiration of the time limit for reply to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(h) An applicant will be permitted a personal or telephone interview with the examiner, which may be requested after the filing of a Demand, and must be conducted during the period between the establishment of the written opinion and the establishment of the international preliminary examination report. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant or, if not filed by applicant be made of record in the file by the examiner.

(i) If the application whose priority is claimed in the international application is in a language other than English, the United States International Preliminary Examining Authority may, where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33(1), invite the applicant to furnish an English translation of the priority document within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary report may be established as if the priority had not been claimed.

Dated: May 23, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–13533 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 111

Alternative Addressing Formats

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Domestic Mail Manual (DMM) A040 to standardize when alternative addressing formats may be used and to clarify the differences between the various formats. In addition, postage payment options would be specified, prohibiting the use of uncanceled stamps on mail with simplified addresses, to enable efficient handling and processing of this mail. Corresponding sections of DMM F010 also would be revised.

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, 1735 N Lynn Street, Suite 3025, Arlington VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington DC. Comments may be submitted also via fax to (703) 292–4058, ATTN: Bill Chatfield.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield at (703) 292–3964.

SUPPLEMENTARY INFORMATION: Three types of alternative addressing formats may be used in lieu of the typical addressing format (*i.e.*, addressee name, address, city, state, and ZIP Code). These alternative addressing formats include a simplified address format (such as ''Postal Customer'') with no actual delivery address, an occupant address format which provides for a generic customer reference in combination with a specific delivery address, and an exceptional address format which has all the traditional addressing elements but includes a current resident alternative to provide for delivery to the address even if the specific addressee is no longer at the address.

Current restrictions on the type of mail for which these formats may be used are more stringent for the exceptional address format than for the simplified or occupant address formats, although the same complications (such as accountable mail being addressed to a generic addressee) would ensue for mail addressed using any of the three alternative address formats.

The current summary introduction does not adequately distinguish between simplified and occupant formatting, thus clarifications would be added.

A new section (to be numbered A040.1.0) would be added to standardize the types of mail that may be mailed with any alternative addressing format. New A040.1.2 extends the current prohibitions for combining exceptional address mail with certain categories of mail and services to all types of alternatively addressed mail. Since each type of alternative address provides for a nonspecific addressee name, the same restrictions currently placed only on mail with the exceptional address format would be extended to any mail with an alternative address format.

New section A040.1.3 explains treatment of all undeliverable mail (previously written only under A040.3.0 for exceptional address format) having alternative addresses and provides for similar treatment of mail with either simplified or occupant addresses. This section replaces old section A040.3.4. A qualifying phrase (''related solely to the address'') is added after ''undeliverable for another reason,'' since there are reasons indicated in Exhibit F010.4.1 that have to do with the name, such as

''Attempted—Not Known'' and ''Deceased,'' which are not valid reasons to return this type of mail. New section A040.1.3 expands the description of treatment of undeliverable mail to include mail with *any* alternative address format. This proposal would eliminate the last sentence in current section A040.3.4, ''The mail is not returned or forwarded.'' This sentence is redundant following the sentence declaring: ''Undeliverable mail is handled in accordance with F010.'' Also, the statement in its current placement is ambiguous as to whether it refers to all undeliverable mail with exceptional address formats or only Periodicals publications. Periodicals publications with exceptional addresses would not be returned since return is provided only when endorsed ''Address Service Requested,'' and Periodicals publications would not be returned if bearing any alternative address format once the prohibition on using ancillary service endorsements is extended to all formats.

Existing sections would be renumbered A040.2.0 through 5.0 to replace the current A040.1.0 through 4.0.

Under new A040.2.1, concerning ''simplified address'' mail, the word ''complete'' replaces ''general'' to better describe the requirement for complete distribution to all customers on a rural route, highway contract route, or all post office boxholders at a particular office. A qualifying phrase is added after mentioning the alternative wording ''Rural Route Boxholder'' to avoid any implication that this wording is acceptable on mail to post office boxholders when a mailing is for both rural routes and post office boxholders. Optional use of the word ''Local'' is also clarified.

Under new section A040.2.4, regarding postage payment, the rewording prohibits the use of uncanceled stamps on simplified address mail. Since most local offices do not have the capability to cancel large quantities of such mail, this mail would be sent to the nearest processing facility. The probability would increase that this mail would be unidentified as to intended office of delivery after cancellation. Cancellation also would require taking apart the packaging and preparation required in A040.1.3 (new A040.2.3), which would be inefficient.

DMM F010.4.0 and 5.0 would amend the limitations on using mail with any alternative address formats as noted in new A040.1.2.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as follows:

A Addressing

A000 Basic Addressing

* * * * *

A040 Alternative Addressing Formats

Summary

[Revise text to read as follows:]

A040 describes the conditions for use and treatment of mail bearing alternative addressing formats: the simplified address format (*i.e.*, ''Postal Customer'' in lieu of specific name and address), the occupant address format (*i.e.*, ''Occupant'' in lieu of specific name, followed by specific address), the exceptional address format (*i.e.* ''Jane Doe or Current Occupant'', followed by specific address), standards for their use, and relevant mail preparation. It also covers the addressing and delivery of mail sent under the franking privilege for members of Congress.

[Renumber 1.0 through 4.0 as 2.0 through 5.0. Add new 1.0 to read as follows:]

1.0 USE AND TREATMENT—GENERAL

1.1 Use

Alternative addressing formats may be used as described in 2.0 through 4.0.

1.1 Prohibited Use

Alternative addressing formats are not permitted on:

a. Express Mail.

b. Mail with any special service under S900.

c. Mail with any ancillary service endorsement under F010.

d. Periodicals intended to count as subscriber or requester copies to meet the applicable circulation standards.

e. Mail addressed to an overseas post office under A010.6.

1.3 Treatment

Mail with occupant or exceptional address format is delivered as addressed and is not forwarded. Such mail is treated as undeliverable only when the address is incorrect or incomplete or when the mail cannot be delivered for another reason related solely to the address (*e.g.*, a vacant building), as shown in Exhibit F010.4.1. Periodicals publishers are notified only when mailpieces with occupant or exceptional address formats are undeliverable for address-related reasons. Mail with a simplified address format is delivered until all deliveries on a route or to post office boxholders have been completed. Undeliverable mail with any alternative address format is disposed of as waste under F010.8.1.

2.0 SIMPLIFIED ADDRESS

[Revise text of renumbered 2.1 to read as follows:]

2.1 Use—Rural and Highway Contract Routes, PO Boxholders

The simplified address format (*i.e.*, ''Postal Customer'') may be used on mail only when complete distribution (except as provided for congressional mail under A040.5.0) is made to each family or boxholder on a rural or highway contract route at any post office and/or to all post office boxholders at a post office without city carrier service. A more specific address such as ''Rural Route Boxholder'' for mail intended to all boxholders on a rural route, followed by the name of the post office and state, may be used. The word ''Local,'' instead of the post office and state names, is optional.

[Revise text of renumbered 2.2 to read as follows:]

2.2 Use—City Routes, P.O. Boxholders

When distribution is to be made to each active possible delivery on city carrier routes or to each post office boxholder at a post office with city carrier service, the addressee's name, mailing address, city, state, and ZIP Code may be omitted from the address only on pieces mailed as official matter by agencies of the federal government (including mail with the congressional frank prepared under A040.5.0), any state, county, or municipal government, and the governments of the District of Columbia, the Commonwealth of Puerto Rico, and any U.S. territory or possession listed in G010. The requirement for distribution to each stop or post office boxholder may be modified for congressional mail under conditions in A040.5.0. The following also applies:

* * * * *

[Revise text of renumbered 2.4 to read as follows:]

2.4 Postage

Postage must be paid with permit imprints, meter stamps, precanceled

stamps, or other authorized methods not requiring cancellation, according to the standards for the class of mail.

[Delete renumbered 2.6.]

* * * * *

[Delete renumbered 3.2.]

* * * * *

[Delete renumbered 4.2.]

* * * * *

[Delete renumbered 4.4.]

* * * * *

[Revise redesignates 5.0 to read as follows:]

5.0 CONGRESSIONAL FRANK

* * * * *

5.2 Alternative Addressing

Mail sent under the franking privilege of a member of, or member-elect to, the Congress, or a delegate, delegate-elect, resident commissioner, or resident commissioner-elect to the House of Representatives may be addressed under the alternative addressing formats in 2.0 through 4.0 for delivery to customers within the congressional district, state, or area that he or she was elected to represent. A member of the House of Representatives may not, under the franking privilege, use the alternative addressing formats to send mail outside the congressional district that elected that member. Any representative elected at large may send franked mail with the simplified address format to postal customers within the entire state that elected the member.

* * * * *

5.4 Delivery

Mail with a simplified addressing format is delivered within the district, state, or area to any of the following:

a. Each boxholder or family on a rural or highway contract route.

b. Each post office boxholder.

c. Each active possible delivery on city carrier routes.

d. For deliveries under 5.4a and 5.4c, partial distribution of simplified address mailings is permitted only when the carrier's delivery territory crosses congressional district boundaries. In these cases, complete distribution is made to the portion of the route within a single congressional district.

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

4.0 BASIC TREATMENT

* * * * *

Exhibit 4.1 USPS Endorsements for Mail Undeliverable as Addressed

[Revise the footnote at the bottom of the exhibit to read as follows:]

*Alternative address formats may not be used on: Express Mail, mail with any special service, mail sent with any ancillary service endorsement, or mail sent to any overseas post office. When an alternative address format is used on Periodicals, the publisher is notified of nondelivery only for those reasons marked with an asterisk (*).

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 First-Class Mail and Priority Mail

* * * * *

[Revise item b to read as follows:]

b. Alternative address formats under A040 may not be used on mail with any ancillary service endorsement or mail with any special service. Forwarding service is not provided for such mail. Undeliverable First-Class Mail with any alternative address format is returned with the reason for nondelivery attached only if the address is incorrect or incomplete or the mail is undeliverable for another reason, related solely to the address, as shown in Exhibit 4.1.

* * * * *

5.2 Periodicals

[Revise item b to read as follows:]

b. Publications with an alternative address format under A040 are delivered to the address when possible. Forwarding service is not provided for such mail. A notice with the reason for the nondelivery of a publication is sent to the publisher only if the copy cannot be delivered to the current address.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–13473 Filed 5–29–03; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030430107–3107–01; I.D. 040703A]

RIN 0648–AN87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Pelagic Sargassum Habitat of the South Atlantic Region

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region (FMP). This rule proposes to limit the harvest or possession of pelagic sargassum in or from the exclusive economic zone (EEZ) off the southern Atlantic states to 5,000 lb (2,268 kg) annually, restrict fishing for pelagic sargassum in the South Atlantic EEZ to an area no less than 100 nautical miles offshore of North Carolina and to the months of November through June, require vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips, and restrict the mesh and frame sizes of nets used to harvest pelagic sargassum. The FMP also identifies essential fish habitat (EFH); establishes EFH-habitat areas of particular concern (EFH-HAPCs); and defines management unit, maximum sustainable yield, optimum yield, and overfishing parameters. The intended effects are to conserve and manage pelagic sargassum and to protect EFH.

DATES: Comments on this proposed rule must be received no later than 5 p.m., eastern time, on June 30, 2003.

ADDRESSES: Copies of the FMP may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366; fax: 843–769–4520; e-mail: *safmc@safmc.net*. The FMP includes a Final Environmental Impact Statement (FEIS), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

Written comments on this proposed rule must be mailed to Steve Branstetter, Southeast Region, NMFS, 9721 Executive Center Drive N., St.

Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, phone: 727–570–5305, fax: 727–570–5583, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council submitted its original FMP to NMFS in 1999 for Secretarial review. On November 24, 1999, NMFS disapproved the FMP based on the FMP's lack of a maximum sustainable yield (MSY) estimate and its failure to justify adequately an optimum yield (OY) of zero (64 FR 69989, December 15, 2003).

Background and Rationale

The FMP and this proposed rule address conservation and management of pelagic sargassum off the U.S. Atlantic coast from the North Carolina/Virginia boundary through the east coast of Florida, including the Atlantic side of the Florida Keys.

Pelagic sargassum supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, four species of sea turtles, and numerous marine birds. The Council has designated pelagic sargassum not only as EFH but also as an EFH-HAPC for snapper-grouper species and coastal migratory pelagic species, and is in the process of designating it as EFH and EFH-HAPC for dolphin and wahoo.

Proposed Management Measures

Annual Quota

The Council concluded that the removal of pelagic sargassum constitutes a net loss of EFH off the southern Atlantic states. However, to lessen the negative impact of a total prohibition of harvest of pelagic sargassum, the Council decided that an annual harvest level of 5,000 lb (2,268 kg) would not jeopardize the continued viability of the resource and, therefore, would be in compliance with the habitat policies of the Council, NMFS, and NOAA and in conformance with the mandate of the Magnuson-Stevens Act to address EFH. Accordingly, this rule proposes an annual quota of 5,000 lb (2,268 kg) wet, landed weight.

Area and Seasonal Restrictions

This rule proposes to restrict the harvest of pelagic sargassum in the South Atlantic EEZ to the area that is between 36°34′55″ N. lat. (the latitude line of the Virginia/North Carolina boundary) and 34° N. lat., (a line closely approximating the North Carolina/South Carolina boundary), and more than 100 nautical miles offshore. This restriction would prevent any geographic expansion of the fishery in the South Atlantic EEZ. In addition, this rule proposes to seasonally restrict the harvest and possession of pelagic sargassum to the months of November through June. This seasonal restriction would lessen the incidental take of sea turtles. The summer and fall months are the months when the greatest density of post-hatchling sea turtles are expected to occur in weed lines of pelagic sargassum.

Observer Requirement

This rule proposes to require an owner or operator of a vessel in the fishery to accommodate a NMFS-approved observer on trips. This requirement would facilitate the monitoring of pelagic sargassum catches, provide valuable information on the pelagic sargassum resource, and monitor the incidental take of sea turtles and other bycatch. The FMP specifies the proposed bycatch sampling methodology.

Net and Frame Size Limitations

This rule proposes a minimum allowable mesh size for a net used for pelagic sargassum of 4 inches (10.2 cm), stretched mesh, which was the minimum mesh size historically employed in the fishery. This minimum mesh size would preclude any increase in incidental catch that might be associated with smaller mesh sizes.

This rule also proposes a limit on the size of the frame used to hold a pelagic sargassum net. Such frame could be no larger than 4 ft by 6 ft (1.2 m by 1.8 m). This measure would control harvesting efficiency and would help limit the amount of any one bed of pelagic sargassum that would be harvested, thus preserving some habitat for the remaining larval and juvenile fish and juvenile sea turtles after harvesting occurs.

Additional Measures in the FMP

In addition to the measures described above, for the management of pelagic sargassum, the FMP would establish the management unit; specify MSY, OY, maximum fishing mortality threshold (MFMT) (the fishing mortality rate which, if exceeded, constitutes overfishing), and minimum stock size threshold (MSST) (the stock size below which pelagic sargassum is overfished); and identify EFH and EFH-HAPC as follows:

Management unit - The population of pelagic sargassum (*Sargassum natans* or *S. fluitans*) in the South Atlantic EEZ and in adjoining state waters.

MSY - 100,000 mt (220,460,000 lb).

OY - 5,000 lb (2,268 kg), wet weight.

MFMT - 9.0 to 18.0 units per year (These values relate to the intrinsic rate of increase in the population).

MSST - 25,000 mt (55,115,000 lb).

EFH - Where pelagic sargassum occurs in the South Atlantic EEZ and adjoining state waters including the Gulf Stream.

EFH-HAPC - Where pelagic sargassum occurs in the South Atlantic EEZ and adjoining state waters.

Availability of the FMP

Additional background and rationale for management of sargassum are contained in the FMP. The availability of the FMP was announced in the **Federal Register** on April 17, 2003, (68 FR 18942). Written comments on the FMP must be received by June 16, 2003. NMFS will address all comments that are received on the FMP or on this proposed rule during their respective comment periods.

Classification

At this time, NMFS has not determined that the FMP is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

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

The Council prepared a Draft Environmental Impact Statement (DEIS) for the original version of the FMP; a notice of its availability was published on July 17, 1998 (63 FR 38643). The comment period ended on August 24, 1998. The environmental impacts described in the DEIS are summarized as follows: The proposed actions are not expected to have any adverse effects on the ocean and coastal habitats. The pelagic sargassum fishery substantially

impacts habitat that is essential to a number of species under the Council's management. The proposed actions will have a positive impact on the physical environment by limiting removal of pelagic sargassum. One firm that has harvested pelagic sargassum may be forced to cease operation unless an alternative source of pelagic sargassum can be economically accessed. The proposed actions are not expected to have a substantial adverse impact on public health or safety and are not expected to affect adversely a marine mammal population.

The Council prepared a FEIS for the original version of the FMP; a notice of its availability was published on October 15, 1999 (64 FR 55912). The comment period ended on November 15, 1999.

After the Council revised the original FMP, NMFS prepared a Supplemental DEIS; a notice of its availability was published on January 11, 2002 (67 FR 1462). The comment period ended on February 25, 2002.

The current FEIS is included in the FMP. The basic conclusions regarding the environmental impacts described in the Supplemental DEIS and the current FEIS are not significantly changed from the DEIS. It should be noted however, that no harvest of sargassum has been recorded since 1997 by the one firm. No directed fishery for sargassum currently exists in the South Atlantic.

Under section 7 of the Endangered Species Act, NMFS completed a consultation on the effect of the sargassum fishery on listed species, including loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles. The biological opinion (BO), dated March 21, 2003, concludes that the sargassum fishery, as proposed to be managed by the FMP, would not likely jeopardize the continued existence of these sea turtle species. The BO sets a level of incidental take and reasonable and prudent measures necessary and appropriate to minimize impacts of incidental take of sea turtles. This proposed rule would: limit the harvest or possession of pelagic sargassum in or from the EEZ off the southern Atlantic states to 5,000 lb (2,268 kg) annually; restrict fishing for pelagic sargassum in the South Atlantic EEZ to an area not less than 100 nautical miles offshore of North Carolina and to the months of November through June; require vessel owners or operators to accommodate NMFS-approved observers on all pelagic sargassum fishing trips; and restrict the mesh and frame sizes of nets used to harvest pelagic sargassum. The BO concludes that adoption of these measures would be beneficial to sea turtle populations because it would regulate and limit a fishery that was previously prosecuted without restrictions; limit direct take of sea turtles by the fishery; and limit loss of important pelagic habitat.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), based on the RIR, for this proposed rule. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objectives of the proposed rule are: establish a management structure to manage sargassum habitat; reduce the impact of the sargassum fishery on essential fish habitat; and reduce the potential for conflict. The proposed rule would: prohibit all harvest and possession of sargassum from the South Atlantic EEZ south of the latitude line representing the North Carolina/South Carolina border (34° N. lat.); prohibit all harvest of sargassum from the South Atlantic EEZ within 100 nautical miles of shore between the 34° N. lat. line and the latitude line representing the North Carolina/Virginia border; limit harvest of sargassum from the South Atlantic EEZ to the months of November through June; establish an annual total allowable catch (TAC) of 5,000 lb (2,268 kg) landed wet weight; require that a NMFS-approved observer be present on each sargassum harvesting trip; and require that nets used to harvest sargassum be constructed of 4–inch (10.2–cm) stretch mesh or larger fitted to a frame no longer than 4 ft by 6 ft (1.2 m by 1.8 m). This action is being considered because sargassum harvest represents removal of essential fish habitat or important developmental or foraging habitat for other federally managed species including threatened/endangered sea turtles; no management structure exists to protect sargassum; potential conflicts could arise if harvest occurs where recreational fishing is occurring; and limited information exists regarding distribution, production, and ecology of sargassum. This proposed rule would limit expansion of harvesting capacity.

The proposed rule would require a NMFS-approved observer on board any vessel in the sargassum fishery to monitor harvest of sargassum and associated bycatch. No duplicative, overlapping or conflicting Federal rules have been identified.

No directed fishery for sargassum currently exists in the South Atlantic. Therefore, no small business entities will be impacted by the proposed rule. One small business entity was an historical participant in the fishery. This firm harvested an average of 14,333 lb (6,501 kg) wet weight annually (1995–1997 average harvest), valued at $43,000 per year, and employed three persons on a full-time basis and other workers on an as needed, part-time basis. A total of 52 trips were made between 1976 and 1997 resulting in the harvest of 448,000 lb (203,209 kg) wet weight (44,800 lb (20,321 kg) dry weight) of sargassum. Harvest peaked at 200,000 lb (90,719 kg) wet weight in 1990. The average harvest over the entire 1976–1997 harvest period was 8,615 lb (3,908 kg) wet weight per trip. Harvest was conducted either through contract with commercial finfish fishing vessels that harvested sargassum in conjunction with their regular fishing trip, or through the use of a converted 63–ft (19.2–m) snapper-grouper vessel acquired to conduct directed harvest trips. No information on harvesting or processing costs is available. Since a small business entity in the commercial fishery is defined as a firm that has annual gross receipts not in excess of $3.5 million, the historical firm, had it remained in the fishery, would be classified as a small business entity. However, no harvest by this firm or any other business entity has been recorded since 1997. The harvest that was collected in 1990 was stockpiled and processed over the 1990–1994 period, so no harvest occurred from 1991–1994. The harvest history for the last years of recorded harvest, 1995–1997, does not appear sufficient to have supported similar stockpiling behavior. It is assumed, therefore, that both harvest and processing activities no longer occur. It is not known with complete certainty, however, whether this is the case with regards to processing.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Since no directed fishery for sargassum currently exists, no business entities, large or small, currently participate in the fishery. The sole historical participant, however, qualified as a small business entity. Since no participants in the fishery currently exist, and the sole historical participant was a small business entity, the issue of disproportionality does not arise.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Since no directed fishery for sargassum currently exists, the regulations do not significantly reduce profit for a substantial number of small

entities. Had the sole historical participant in the fishery continued operation, the allowable TAC would have reduced average harvest and revenues by 65 percent, from 14,333 lb (6,501 kg) wet weight (1995–1997 average harvest) to 5,000 lb (2,268 kg), with revenues reduced from $43,000 to $15,000. Although profit figures are not available, it is obvious that the reduction in profit would also be significant. However, as previously stated, no directed fishery exists, so no reduction in profits will occur for any small business entities.

Since there is no directed fishery for sargassum and no current processing of stockpiled product is assumed to be occurring, the proposed rule would not generate any negative economic impacts on small entities. Therefore, the issue of significant alternatives to mitigate economic impacts is not relevant. However, in the event that directed harvest is attempted, only the proposed harvest restrictions would result in direct economic impacts. The proposed harvest restrictions are not believed to be sufficient to allow sustained participation in a directed fishery for sargassum since the allowable harvest is only 5,000 lb (2,268 kg) wet weight per year. Two other alternatives, allowing no harvest and prohibiting harvest after January 1, 2001, would similarly not support sustained participation in the fishery and are, therefore, not relevant significant alternatives in that they would not mitigate the negative economic impacts of the proposed rule.

The no action alternative and an alternative establishing the TAC at 100,000 metric tons wet weight would effectively allow unrestricted harvest. Additional alternatives would specify TAC at 20,000 lb (9,072 kg) wet weight and 200,000 lb (90,720 kg) wet weight, which would allow harvests greater than the historical average harvest per year (8,615 lb (3,908 kg) wet weight for 1976–1997 or 14,333 lb (6,501 kg) wet weight for 1995–1997). Any of these alternatives would, therefore, eliminate the negative economic impacts on a directed fishery. These alternatives, however, are inconsistent with the Council's intent to both discontinue unregulated harvest of sargassum and limit expansion of a sargassum fishery. The Council concluded that severe limitation on harvest is likely to increase productivity of marine life in the ecosystem and thus increase consumptive, non-consumptive, and indirect (value to other species as habitat) use values. Furthermore, the Council concluded that maintaining these consumptive, non-consumptive, and indirect use benefits greatly outweigh the costs resulting from severely limiting harvest. In addition, there was overwhelming public support for a measure to prohibit the directed harvest of sargassum.

Copies of the IRFA and RIR are available upon request(see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule contains the collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. The public reporting burden is estimated to be 45 minutes per vessel for vessel identification requirements and 5 minutes for notification prior to a trip. Public comment is sought regarding: whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burdens of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 23, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.1, table 1, the following entry is added in alphabetical order to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

FMP Title	Responsible fishery management council(s)	Geographical area
* * * * * * *		
FMP for Pelagic Sargassum Habitat of the South Atlantic Region	SAFMC	South Atlantic
* * * * * * *		

3. In § 622.2, the definition of ''Pelagic sargassum'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Pelagic sargassum means the species *Sargassum natans* or *S. fluitans*, or a part thereof.

* * * * *

4. In § 622.6, paragraph (a)(1)(i) introductory text is revised to read as follows:

§ 622.6 Vessel and gear identification.

(a) * * *

(1)

(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses pelagic sargassum in the South Atlantic EEZ, must display its official number--

* * * * *

5. In § 622.8, paragraph (a), paragraph (b) introductory text, and paragraph (c) introductory text are revised to read as follows:

§ 622.8 At-sea observer coverage.

(a) *Required coverage*—(1) *Pelagic sargassum.* The owner or operator of a vessel that harvests or possesses pelagic sargassum on any trip in the South Atlantic EEZ must carry a NMFS-approved observer.

(2) *Golden crab.* The owner or operator of a vessel for which a Federal commercial permit for golden crab has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

(b) *Notification to the SRD.* When observer coverage is required, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

* * * * *

(c) *Observer accommodations and access.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

* * * * *

6. In § 622.35, paragraph (g) is added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) *Pelagic sargassum area and seasonal restrictionsl*--(1)*Area limitations.* (i) No person may harvest pelagic sargassum in the South Atlantic EEZ between 36°34′55″ N. lat. (directly east from the Virginia/North Carolina boundary) and 34° N. lat., within 100 nautical miles east of the North Carolina coast.

(ii) No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ south of 34° N. lat.

(2) *Seasonal limitation.* No person may harvest or possess pelagic sargassum in or from the South Atlantic EEZ during the months of July through October. This prohibition on possession does not apply to pelagic sargassum that was harvested and landed ashore prior to the closed period.

7. In § 622.41, paragraph (k) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(k) *Pelagic sargassum.* The minimum allowable mesh size for a net used to fish for pelagic sargassum in the South Atlantic EEZ is 4.0 inches (10.2 cm), stretched mesh, and such net must be attached to a frame no larger than 4 ft by 6 ft (1.2 m by 1.8 m). A vessel in the South Atlantic EEZ with a net on board that does not meet these requirements may not possess any pelagic sargassum.

8. In § 622.42, paragraph (g) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(g) *Pelagic sargassum.* The quota for all persons who harvest pelagic sargassum in the South Atlantic EEZ is 5,000 lb (2,268 kg), wet, landed weight. See § 622.35(g)(1) for area limitations on the harvest of pelagic sargassum.

9. In § 622.43, paragraph (a)(7) is added and paragraph (b)(2) is revised to read as follows:

§ 622.43 Closures.

* * * * *

(a) * * *

(7) *Pelagic sargassum.* Pelagic sargassum may not be harvested or possessed in the South Atlantic EEZ and the sale or purchase of pelagic sargassum in or from the South Atlantic EEZ is prohibited.

* * * * *

(b) * * *

(2) The prohibition on sale/purchase during a closure for allowable octocoral in paragraph (a)(2) of this section or for pelagic sargassum in paragraph (a)(7) of this section does not apply to allowable octocoral or pelagic sargassum that was harvested and landed ashore prior to the effective date of the closure.

* * * * *

[FR Doc. 03–13558 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 104
Friday, May 30, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

African Development Meeting; Board of Directors Meeting

Time: 10 a.m. to 11:30 a.m.
Place: ADF headquarters.
Date: Wednesday, June 4, 2003.
Status: Open.

Agenda

10 a.m.—Chairman's Report;
10:30 a.m.—President's Report;
11 a.m.—New Business;
11:30 a.m.—Adjournment.

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who may be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 03–13588 Filed 5–27–03; 4:42 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TB–03–08]

Flue-Cured Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Flue-Cured Tobacco Advisory Committee.

DATES: The meeting will be held on June 12, 2003, at 1 p.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elect officers, recommend opening dates and selling schedules, and discuss other related issues for the 2003 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, D.C. 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by June 6, 2003, and inform us of your needs.

Dated: May 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–13522 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday June 16, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on June 16, begins at 6:30 p.m., at U.S. Forest Service, Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include Bearlodge Fuel Break, watershed and wildlife Projects, Sundance Campground tree planting and updates on April's actions. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: May 22, 2003.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 03–13494 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Livestock and Meat Marketing Study

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration will be conducting a broad study of marketing methods used in the livestock and red meat industries, as mandated by Congress. The purpose of this notice is to solicit comments on the scope and approach of the study, the names of persons to be considered for involvement in peer reviews, and the names of organizations that might be interested in bidding on the study.

DATES: Comments will be considered if received by June 30, 2003.

ADDRESSES: Send comments via electronic mail to *comments.gipsa@usda.gov.* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, Director, Economic and Statistical Support Staff, Grain Inspection, Packers and Stockyards Administration, Room 1644–S, STOP 3647, 1400 Independence Ave. SW., Washington, DC 20250–3647 or e-mail to *gerald.e.grinnell@usda.gov*.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA) administers the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock, meatpacking, and poultry industries. During the development of the 2002 Farm Bill, the Senate considered an amendment to the P&S Act that would make it unlawful for a packer to own, control, or feed livestock intended for slaughter. After much debate, the proposed amendment was dropped in conference.

The issue of packer ownership of livestock is highly contentious among livestock industry members. Some industry participants are concerned that packer ownership of livestock before they are ready for slaughter and other advance procurement arrangements (some of which are referred to as captive supplies [1]), may enable packers to reduce spot market prices, and that the arrangements may threaten the future of spot markets or reduce market opportunities for small producers. Others believe that advance marketing arrangements (both procurement and sales) increase efficiency, quality of products, responsiveness to changing consumer preferences, and competitiveness with other meats.

Issues surrounding packer ownership of livestock for slaughter are part of a larger set of issues relating to concentration and vertical coordination in the livestock and meat system. Many questions remain unanswered about these issues. The effects of the ownership of livestock by packers and its impacts on the livestock and meat marketing industries needs to be better understood before it can be determined whether legislative action may be appropriate. In the fiscal year 2003 budget (Pub. L. 108–7), Congress specified that $4.5 million of the GIPSA budget is to be used for a packer concentration study. Congress specified that the study should address ''issues surrounding a ban on packer ownership'' (*Congressional Record,* February 12, 2003, page H870).

Packer ownership is one of a broad range of alternative marketing arrangements that have emerged in the cattle, hog, lamb, and meat industries to coordinate activities between and within stages of the livestock and meat system. It is difficult to make important decisions about these practices in the absence of sound analyses of their use and implications. The planned study will contribute to better understanding of the role of alternative marketing arrangements, the extent of their use, reasons why firms enter into them, and their implications.

Since captive supplies, packer ownership, and other advance marketing arrangements are interrelated throughout the livestock and red meat industries, we plan to study marketing methods from the farm level to the retail, export, and foodservice levels. The planned study will examine the use and economic effects of various methods for transferring cattle, hogs, lambs, and meat between successive stages of the livestock and meat marketing system. It will examine marketing arrangements from the first-producer (for example, cow-calf producers and hog farrowing operations) to the procurement of meat and meat products by retail establishments, exporters, and the hotel, restaurant, and institutional trades.

We established an interagency working group with representatives from USDA and other federal agencies to provide advice on the study. The working group includes representatives from the Office of the Chief Economist, Economic Research Service, Agricultural Marketing Service, National Agricultural Statistics Service, Office of Budget and Program Analysis, and Grain Inspection, Packers and Stockyards Administration in USDA plus the Department of Justice, Federal Trade Commission, and Commodity Futures Trading Commission.

We believe that we have appropriately defined the scope and identified the research steps necessary to complete the study. We have identified 10 specific objectives for the study. We then grouped the 10 objectives into 5 parts or phases. Each part represents a unique block of work, usually involving common data collection requirements or similar types of analyses. Each part and its associated objectives are specified in the following table:

Part	Objective
Part 1: Identify and classify spot and alternative marketing arrangements into appropriate categories for examining alternative methods of vertical coordination.	Objective 1: Identify various spot and alternative arrangements for transferring livestock and meat between successive stages of the livestock and meat system from farmers to retailers, and classify the arrangements by type of marketing method.
Part 2: Survey firms to learn about the terms of various spot and alternative marketing arrangements and examine why firms use them.	Objective 2: Describe the terms of the arrangements (for example, written or oral, length of agreements, quantity requirements, which party controls delivery timing, how animal or meat quality is determined, how prices are determined when formulas are used, termination options, dispute resolution mechanisms, whether prices are reported to the Agricultural Marketing Service or other market news organization), and describe arrangements that cover more than two stages in the supply chain.
	Objective 3: Determine the availability of alternative marketing arrangements to market participants (for example, producers, feedyards, packers, distributors, retailers) of various sizes and in different geographic regions.
	Objective 4: Determine reasons why producers, feedlots, packers, distributors, and retailers enter into these spot and alternative marketing arrangements (for example, cost savings, risk reduction, access to financing, access to improved genetics, access to management expertise).

[1] GIPSA defines captive supplies as livestock that are owned or fed by a packer more than 14 days prior to slaughter; livestock that are procured by a packer through a contract or marketing agreement that has been in place for more than 14 days prior to slaughter; and livestock that are otherwise committed to a packer more than 14 days prior to slaughter.

Part	Objective
Part 3: Examine sales and procurement transactions records to measure the number of animals and quantity of meat traded through various spot and alternative marketing arrangements, examine price premiums and discounts associated with the different marketing methods, and examine short-run price effects of captive supplies.	Objective 5: Measure the extent to which alternative marketing arrangements are used in the cattle, hog, lamb, and meat industries. Objective 6: Examine price differences among spot and alternative marketing arrangements and the effects that alternative marketing arrangements have on spot market prices in the short run.
Part 4: Measure and compare costs and benefits associated with the various spot and alternative marketing methods.	Objective 7: Determine what effects spot and alternative marketing arrangements have on firms' operating costs and efficiency, animal and meat quality, level and distribution of risks among market participants, and consumer demand for livestock and meat. Measure potential size economies and their sources (for example, procurement costs, operating costs, selling costs, by type of resource, such as labor costs or capital costs).
Part 5: Summarize the findings of the four parts described above and address issues associated with price discovery, thin markets, long run effects on costs and prices, competitiveness with other meats, structural change, and market power dimensions.	Objective 8: Examine the implications of alternative marketing arrangements on price discovery in cattle, hog, lamb, and meat markets. Assess how prices are likely to be determined if spot markets become thinner as use of alternative marketing arrangements increases. Objective 9: Examine what effects spot and alternative marketing arrangements have on long run costs and prices, and their implications for competitiveness with other meats, structure of the livestock industry, and structure of the meatpacking industry. Objective 10: Examine the implications of spot and alternative marketing arrangements on barriers to entry, industry concentration, and other factors that have the potential to increase market power in livestock production, meatpacking, and retailing.

We request comments from interested persons on the plan for the study as outlined above.

We anticipate that both voluntary submissions of data and data collected under GIPSA's authorities will be required for the study. As the information collection requirements are identified, we will follow the standard procedure for notice, comment, and request for approval from the Office of Management and Budget.

We plan to enter into contract(s) for the performance of most of the work involved in the study. GIPSA, through USDA's Animal and Plant Health Inspection Service, will solicit and award one or more contracts competitively for the study in accordance with Federal procurement procedures. Specifically, GIPSA plans to solicit research proposals through a formal request process. Individual contracts may cover several parts of the study. For example, one contract may cover cattle, another hogs, and a third sheep and lambs; or some other combination of the study's parts may be used. We anticipate that consulting firms and university departments of agricultural economics, economics, and business may have a particular interest in bidding on the work. Collaborative research relationships among institutions may be needed to assemble all of the expertise needed for different parts of the study.

We also intend to establish a five-to seven-member academic peer review group having outstanding research credentials in this area of research to review the researchers' technical work. We request the public to submit names of highly qualified academicians to serve as peer reviewers.

Conclusion

GIPSA will use $4.5 million dollars of its 2003 fiscal year budget appropriation to conduct a study of livestock and meat marketing, addressing issues ''surrounding a ban on packer ownership'' of livestock. Some economic studies have been conducted on the effects of captive supplies on spot market prices of fed cattle. These studies have shown a correlation between the captive supplies and lower spot market prices, but have not shown that the captive supplies cause lower prices. There has been little research on the effects of packer feeding and other alternative marketing arrangements of hogs or other types of livestock. A few studies have surveyed hog market participants to learn why they entered into alternative marketing arrangements. Studies have not examined the role of wholesalers and retailers in alternative marketing arrangements, nor such critical issues as the long-run effects of alternative marketing arrangements on prices, efficiencies, and other economic and market factors.

We intend to address these issues in the livestock and meat marketing study described in this Notice. The GIPSA study will serve several purposes:

- It will give producers better information on which to base their decisions about whether to participate in non-traditional marketing arrangements and, if so, which types of arrangements are best suited to their needs.
- It will contribute to better public understanding of the role of alternative marketing arrangements, the extent of their use, reasons why firms enter into them, and the implications of such arrangements.
- It will help identify emerging marketing information needs of livestock producers and other market participants.
- It will make an important contribution to USDA and Congress in deciding whether restrictions on use of captive supplies are warranted.
- It will assist GIPSA in enforcing the Packers and Stockyards Act by contributing to the Agency's understanding of changing marketing practices and by identifying areas that the Agency may need to include in its investigation plans.

To provide members of the livestock and meat marketing industries as well as other interested persons with an opportunity to comment on the study, we published this Notice in the **Federal Register**. We encourage all interested persons to submit comments on the plans for the study, including its scope and objectives, and methodology; submit names and contact information for highly qualified academicians to be peer reviewers; and submit names and contact information for organizations that may be interested in receiving information to bid on the study when we begin the procurement process.

Authority: Pub. L. 108–7, 117 Stat. 22.

Dated: May 27, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–13517 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Access Road; Alley Cropping; Atmospheric Resource Quality Management; Cover Crop; Feed Management; Field Boarder; Filter Strip; Forest Site Preparation; Forest Stand Improvement; Grazing Land Mechanical Treatment; Heavy Use Area Protection; Herbaceous Wind Barriers; Manure Transfer; Nutrient Management; Pasture and Hayland Planting; Prescribed Grazing; Range Planting; Riparian Herbaceous Cover; Streambank and Shoreline Protection; Subsurface Drain; Vegetative Barrier; and Water Harvesting Catchment. These standards are used to convey national guidance in developing Field Office Technical Guide Standards used in the States and the Pacific Basin and Caribbean Areas. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean Areas who choose to adopt these practices for use within their States/Areas will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in resource management systems that treat highly erodible land, or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received for a 30-day period, starting on the date of this publication. This series of new or revised conservation practice standards will be adopted after the close of the 30-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890.

The telephone number is (202) 720–5023. The standards are also available, and can be downloaded from the Internet at: *http://www.ftw.nrcs.usda.gov/practicestds.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available, for public review and comment, proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments on the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on May 15, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–13548 Filed 5–29–03; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 29, 2003.

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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Antibacterial Wipe Shipper M.R. 90403
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia
Product/NSN: Belt, Women's Cotton Web, Black with Gold Clip 8445–01–501–0232
NPA: Travis Association for the Blind, Austin, Texas
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Service

Service Type/Location: Janitorial/Custodial, U.S. Customs Service, 8855 NE Airport Way, Portland, Oregon
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Contract Activity: U.S. Customs Service, Indianapolis, Indiana

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will 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.

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, Petroglyph National Monument Headquarters, 6001 Unser Boulevard NW, Albuquerque, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico
Contract Activity: Department of Interior
Service Type/Location: Janitorial/Custodial, Social Security Administration, Data Operations Center and Annex, Albuquerque, New Mexico
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico
Contract Activity: Social Security Administration, Baltimore, Baltimore, Maryland

G. John Heyer,

General Counsel.

[FR Doc. 03–13575 Filed 5–29–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 29, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 10, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 1434) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. 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 service to the Government.

2. The action will result in authorizing small entities to furnish the service 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 service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Janitorial/Custodial VA Medical Center—First Floor, Indianapolis, Indiana
NPA: GW Commercial Services, Inc., Indianapolis, Indiana
Contract Activity: VA Medical Center, Indianapolis, Indiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 03–13577 Filed 5–29–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

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

ACTION: Notice of first request for panel review.

SUMMARY: On May 23, 2003, the Gouvernement du Quebec filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was filed by Magnola Metallurgy Inc. on the same day. Panel review was requested of the final results of the Countervailing Duty New Shipper Review made by the United States Department of Commerce, International Trade Administration, respecting Alloy Magnesium from Canada. This determination was published in the **Federal Register**, (68 FR 22359) on April 28, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–02 to this request.

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

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

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 23, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 23, 2003);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in

support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 7, 2003); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 23, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–13572 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031703A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Testing in the Northern Gulf of Mexico

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 conducting calibration measurements of its seismic array in the northern Gulf of Mexico (GOM) has been issued to Lamont-Doherty Earth Observatory (LDEO).

DATES: Effective from May 27, 2003 through May 26, 2004.

ADDRESSES: The application and/or authorization are available by writing to the Chief, Marine Mammal Conservation 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: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

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 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and 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 takings 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. Under section 18(A), 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].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 24, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting calibration measurements of its seismic array in the northern GOM. The LDEO plans to measure sound levels from each of the airgun arrays that will be used during their seismic survey programs during future studies. These measurements will be made in shallow, shelf slope, and deep waters in the GOM during late May and/or June 2003, but may also be held at some other time during the next 12 months. The purpose of these measurements is to verify estimates of sound fields around the airgun arrays that have been made using LDEO acoustical models. Verification of the output from these models is needed to confirm the distances from the airguns (safety radii) within which mitigation may be necessary to avoid exposing marine mammals to airgun sounds at received levels exceeding established limits for preventing injury to marine mammals, e.g. the 180 and 190 dB re 1 μPa (rms) limits set for cetaceans and pinnipeds, respectively. The measurements will also verify the distances at which the sounds diminish below other lower levels that may be assumed to characterize the zone where disturbance is possible or likely.

The data to be collected during this project can be used to develop a better understanding of the impact of man-made acoustic sources on marine mammals. The planned project will obtain the first calibrated measurements of the *R/V Maurice Ewing*'s (*Ewing*) acoustic sources across a broad range of frequencies from 1 Hz to 25 kHz, and for various configurations of the *Ewing*'s airgun array. Calibration experiments will be conducted in the shallow, shelf slope, and deep water of the GOM to quantify the differences in sound attenuation in relation to water depth. Once calibration measurements have been made, they will be used to model the full propagation field of the *Ewing* in varying geographical settings. This modeling will provide data needed to help minimize any potential risk to marine mammals during future seismic surveys.

A notice of receipt of the LDEO application and proposed IHA was published in the **Federal Register** on April 11, 2003 (68 FR 17773). That notice described, in detail, the proposed activity and the characteristic of the *Ewing*'s acoustic sources, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. That information is not repeated here.

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on April 11, 2003 (68 FR

17773). During the 30–day public comment period, comments were received from the Marine Mammal Commission (the Commission), the Florida Department of Environmental Protection (DEP), and a member of the public who opposed the issuance of the IHA but did not provide additional information. The Commission and DEP comments are addressed in this document.

Comment: The Commission believes that NMFS' preliminary determinations, made in the previously cited notice, are reasonable provided the proposed mitigation and monitoring activities are conducted as described. Accordingly, the Commission recommended that NMFS grant the authorization.

Response: NMFS reviewed the mitigation and monitoring measures that were proposed by LDEO and has found that they will provide the best means to ensure that the findings made herein, (that the taking, by harassment, will result in only small numbers of marine mammals and have no more than a negligible impact on affected species and stocks) are valid. A discussion of the mitigation and monitoring measures that are contained in the IHA follows.

Mitigation

The directional nature of the alternative airgun arrays to be used in this project (especially the larger arrays) is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level.

For the proposed airgun calibration work in the GOM in 2003, LDEO at times will use 2 GI-guns with total volume 210 in^3, and at other times will use a 20–gun array with 6–20 active guns and total volume 1350 8600 in3. Individual airguns will range in size from 80 to 850 in3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the array will be directed mostly downward.

The sound pressure fields have been modeled in relation to distance and direction from each of the five array configurations and are shown in Figs. 7–11 in LDEO's application. The radii around the arrays where the received level would be 180 dB re 1 μPa (rms), the shutdown criterion applicable to cetaceans, were estimated as 50 m (164 ft), 220 m (722 ft), 830 m (2,723 ft), 880 m (2,887 ft) and 950 m (3,117 ft) for the 2–, 6–, 10–, 12–, and 20–gun arrays, respectively.

Until such time as the sound pressure fields estimated by the model have been confirmed by measurements of actual sound pressure levels, LDEO will use 1.5 times the estimated 180–dB isopleth. One of the main purposes of the measurements that will be made during the GOM project is to verify or refine these safety radii. The current plan is to measure sounds produced by the 6–, 10–, 12– and 20–gun arrays during the same transit past the spar buoy, operating these four combinations of airguns in a repeating sequence. The safety radius for the 20–gun array (x 1.5) will be used whenever the sequence including (at times) 20 active guns is in progress. Sounds from the 2 GI guns will be measured during separate transits past the spar buoy. During the GOM cruise, the safety radii for cetaceans are 75 m (246 ft) and 1,425 m (4,675 ft), respectively, for the 2 GI-guns and 20–gun array. LDEO will shut down the airguns if marine mammals are detected within the safety radii.

Also, LDEO will use a ramp-up (soft-start) procedure when commencing operations. Ramp-up will begin with the smallest gun in the array that is being used (80 in^3 for all subsets of the 20–gun array). Guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minutes. Additional mitigation measures will occur through the LDEO monitoring program.

Marine Mammal Mitigation Monitoring

Two observers will monitor marine mammals from the Ewing starting 30 minutes before all Ewing airgun operations. Airguns will be operated only during daylight; they will not be operated or started up during darkness or periods whenever the safety zone is not visible to the observer. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of significant effects on hearing or other physical effects.

The *Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. In addition to visual observations, a towed hydrophone array will be used to detect and locate marine mammals. This will increase the likelihood of detecting and identifying any marine mammals that are present during airgun operations. The proposed monitoring plan is summarized later in this document.

Safety Radii

Received sound levels have been modeled for the 2–, 6–, 10–, 12–, and 20–airgun arrays and are depicted in Figures 7–11 of the LDEO application. Based on the modeling, estimates of the 190–, 180–, 170–, and 160–dB re 1 μPa (rms) distances (safety radii) for these arrays are shown in Table 1 in the application and previously (see 68 FR 17773, April 11, 2003). Acoustic measurements in shallow (>100 m/328 ft), mid-depths (100–2000 m/328–6,562 ft), but probably about 1000 m (3,281 ft)), and deep (>2000 m) water will be taken during the proposed cruise, in order to check the modeled received sound levels during operation of these airgun arrays in a wide variety of water depths. Because the safety radii will not be confirmed before the cruise, conservative safety radii will be used during the GOM surveys. Conservative radii will be established at 1.5 times the distances calculated for the 2 GI-guns and the 20 airgun array. Thus, during the GOM cruise the conservative safety radii for cetaceans are 75 m (246 ft) and 1,425 m (4,675 ft) for the 2 GI guns and 20–gun arrays, respectively.

Airgun operations will be suspended immediately when cetaceans are detected within or about to enter the appropriate 180–dB (rms) radius. This 180 dB criterion is consistent with guidelines listed for cetaceans by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the GOM acoustic verification program, provided that doing so will not compromise operational safety requirements:

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. If practical, the vessel's course and/or speed will be changed in a manner that avoids approaching within the safety radius while also minimizing the effect to the planned science objectives. The marine mammal's activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken (i.e., either further course alterations or shutdown of the airguns).

Shutdown Procedures

Vessel-based observers using visual aids and acoutical arrays will monitor marine mammals near the seismic vessel for 30 minutes prior to start up and during all airgun operations. No airguns will be operated during periods of darkness. Airgun operations will be suspended immediately when marine mammals are observed or otherwise detected within, or about to enter, designated safety zones where there is a possibility of physical effects, including effects on hearing (based on the 180 dB criterion specified by NMFS). The shutdown procedure should be accomplished within several seconds (or a ''one shot'' period) of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observers will advise that seismic surveys can re-commence. The ''ramp-up'' procedure will then be followed.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a ''no shooting'' period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, respectively, but that is not expected to occur during the GOM project.

Ramp-up will begin with the smallest gun in the array that is being used (80 in^3). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 18–20 min (10–12 gun arrays).

Monitoring and Reporting

Vessel-based Visual Monitoring

As mentioned under Mitigation, two observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel during the acoustical measurement program in the GOM. They will search for and observe marine mammals whenever airgun operations are in progress. Airgun operations will be restricted to periods with good visibility during daylight hours. Two observers will be on duty for at least 30 minutes prior to the start of airgun operations and during ramp-up procedures. The observers will watch for marine mammals from the highest practical vantage point on the vessel, which is the bridge. The observer(s) will systematically scan the area around the vessel with 7X50 Fujinon reticle binoculars or with the naked eye. ''Bigeye'' (25X150) binoculars will be available during this cruise to assist with species identification of marine mammals that are sighted. Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4X optics or equivalent) will be available to assist with distance estimation. If a marine mammal is detected well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius. When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by harassment. It will also provide the information needed to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; (2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare (The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.) All mammal observations and airgun shutdowns will be recorded in a standardized format.

At least two experienced marine mammal observers (with at least one previous year of marine mammal observation experience) will be on duty aboard the seismic vessel.

Prior to the start of the project, the primary observers will participate in a 1–day meeting and training or refresher course on the specific marine mammal monitoring procedures required for this project.

Two observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so. The results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Vessel-based Passive Acoustic Monitoring

A towed hydrophone array will be deployed during the airgun measurements in the GOM. The acoustical array will be monitored during airgun operations to detect, locate and identify marine mammals near the *Ewing*, insofar as this is possible via passive acoustic methods. The acoustical array will provide additional ability to detect, locate and identify marine mammals over and above that provided by visual observations. The acoustical data will be integrated, in real time, with the visual observations to ensure that marine mammals do not enter the 180–dB safety radius. LDEO will use the standard methods that have been used and reported during other recent studies of seismic and marine mammals (Greene *et al.*, 1997; McCauley *et al.*, 1998, 2000a,b).

Reporting

A report will be submitted to NMFS within 90 days after the end of the acoustic measurement program in the GOM. The report will describe the operations that were conducted, the marine mammals that were detected near the operations, and at least some of the results of the acoustical measurements to verify the safety radii. (Data from the LDEO spar buoy are expected to be available quickly, but it is uncertain how quickly the EARS data will be available given the nature of the EARS buoys.) The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks with the possible exception of the backup EARS data. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Estimates of Take by Harassment

As described in proposed authorization notice (April 11, 2003; 68 FR 17773)) and in the LDEO application, animals subjected to sound levels greater than 160 dB may alter their behavior or distribution, and, therefore, might be considered to be taken by harassment. However, the 160–dB criterion, used by NMFS as an indicator of where Level B harassment may result from impulse sounds, is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and the dolphins generally appear to be more tolerant of strong sounds than are most baleen whales. For that reason, it has been suggested that for purposes of estimating incidental harassment of odontocetes, a 170–dB criterion might be appropriate.

All anticipated takes would be Level B harassment takes involving temporary changes in behavior. The mitigation measures to be applied by LDEO will minimize the possibility of injurious takes during the planned acoustic calibration project in the northern GOM. The estimate of the number of marine mammals that might be taken by harassment is based on a consideration of the number of marine mammals that might be disturbed by operations with the specific airgun arrays planned for each of the calibration runs past the spar buoy. LDEO's initial estimates of the numbers that might be disturbed assume that, on average, cetaceans exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms) might be sufficiently disturbed to be ''taken by harassment.'' The best estimate also includes an allowance for four extra source-vessel transits past the spar buoy in order to obtain the required calibration data and, therefore, is an overestimate if the calibrations measurements require only six transits. The best estimates take account of data on marine mammal abundance from previous surveys in that area.

The anticipated radii of influence of the multi-beam sonar and the sub-bottom profiler are much less than that for the airgun array (see previous discussion). It is assumed that any marine mammal close enough to be affected by the multi-beam sonar or the sub-bottom profiler would already be affected by the airguns. Therefore, no additional takings by harassment would occur for animals that might be affected by the multi-beam sonar or the sub-bottom profiler.

Estimates of Take by Harassment for the GOM

Extensive aircraft- and ship-based surveys have been conducted for marine mammals in the GOM, including the area where the calibration study will be conducted (Davis et al., 2000, 2002; Wursig *et al.*, 2000; Baumgartner *et al.*, 2001). However, oceanographic and other conditions strongly influence the distribution and numbers of marine mammals present in an area (Davis *et al.*, 2002). Thus, for some species the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed acoustical calibration study. Table 3 in the LDEO application gives the densities for each species or species group of marine mammals in LDEO's proposed study area based on the 1996/97 GulfCet II surveys (Davis *et al.*, 2000). The densities from the GulfCet studies had been corrected by the original authors for detectability bias but not for availability bias. Therefore, in Table 3, LDEO has adjusted the originally reported densities and population estimates to account for availability bias. Based on those densities, the numbers of each species that might be taken by harassment and the requested level of take by harassment are shown in Table 3. The LDEO application is available upon request (see **ADDRESSES**).

Dolphins account for 94 percent of the best estimate of takes (i.e., 486 of 520 animals). There is no general agreement regarding any alternative ''take'' criterion for dolphins exposed to airgun pulses. However, if only those dolphins exposed to ≥170 dB re 1 μPa (rms) were affected sufficiently to be considered ''taken by harassment'', then the best estimate for dolphins would be 183 rather than 486. This is based on the predicted 170 dB radii around the 2 GI gun and 20–airgun arrays (155 m (508 ft) and 3,420 m (11, 220 ft), respectively). This number of 183 animals is considered by LDEO to be a more realistic ''best estimate'' of the number of dolphins that may be disturbed (i.e., Level B harassment). This number is about 0.1 percent of the estimated GOM population of dolphins (approx. 165,715). Therefore, the total number of dolphins likely to react behaviorally is considerably lower than the estimated 486 animals.

Of the 520 marine mammals that might be exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms), an estimated two would be sperm whales. Two sperm whales represent 0.4 percent of the estimated GOM population of about 530 sperm whales.

Coastal Zone Management Act Consistency

On May 7, 2003, the Florida DEP noted that, based on the information contained in the NMFS notice (April 11, 2003, 68 FR 17773) and the comments provided by State reviewing agencies, the State determined that the proposed action by LDEO and NMFS is consistent with the Florida Coastal Management Program.

Endangered Species Act (ESA)

NMFS has concluded consultation under section 7 of the ESA on NMFS' issuance of an IHA to take small numbers of marine mammals, by harassment, incidental to conducting calibration measurements of its seismic array in the GOM by LDEO. The finding of that consultation was that this study is not likely to jeopardize the continued existence of marine species listed as threatened or endangered under the ESA. No critical habitat has been designated for these species in the GOM; therefore, none will be affected. A conservation recommendation was made to ensure that the safety zone is clear of sea turtles prior to ramp up. This recommendation has been implemented through the IHA to LDEO. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

On March 10, 2003, the National Science Foundation (NSF) made a determination, based on information contained within its Environmental

Assessment (EA) that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On April 11, 2003 (68 FR 17773), NMFS noted that the NSF had prepared an EA for the GOM calibration study. In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA 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. As a result, NMFS has determined that it is not necessary to issue either a new EA or a Supplemental EA for the issuance of an IHA to LDEO for this activity. Therefore, based on this review and analysis, NMFS is adopting the NSF EA under NEPA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Determinations

Based on the information contained in the LDEO application, the NSF EA, the April 11, 2003 notice (68 FR 17773) and this document, NMFS has determined that conducting a 3– to 4–day calibration study of the seismic airgun array onboard the *Ewing* in the northern GOM in 2003 by LDEO would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal species or stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses. This activity will result, at worst, in a temporary modification in behavior by certain species of marine mammals. 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, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA. For these reasons therefore, NMFS has 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 take small numbers of marine mammals, by harassment, incidental to conducting calibration measurements of the seismic array onboard the *Ewing* in the northern GOM to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: May 23, 2003.

Donna Wieting,

Acting Chief, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–13559 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in June, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Friday, June 13, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Four Points By Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the public hearings and early written comments on Amendment 10 and hear preliminary advice from NMFS. They will also receive a progress report on Framework Adjustment 39 to the Multispecies Fishery Management Plan, which will set the finfish measures associated with Amendment 10 access to Georges Bank closed areas.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 27, 2003.

Richard W. Surdi,

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

[FR Doc. 03–13554 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052703B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet June 15–20, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings and hearing will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: 650–570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on Monday, June 16, at 3:30 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 3:30 p.m. until 4:15 p.m. on Monday, June 16 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda
5. Approve March 2003 Minutes

B. Groundfish Management

1. NMFS Report on Groundfish Management
2. Observer Data Implementation Status
3. Stock Assessments and Rebuilding Analyses for 2004 Groundfish Management
4. Preliminary Range of Harvest Levels for 2004
5. Status of Groundfish Fisheries and Initial Policy Consideration of Inseason Adjustments
6. Standards and Criteria Timeline for Approving Exempted Fishing Permits (EFPs)
7. EFP Update and New Proposals for 2004
8. Final Action on Groundfish Inseason Management
9. Implementation of a Vessel Monitoring System
10. Groundfish Stock Assessment Review Process for 2005 through 2006
11. Status of the Groundfish Essential Fish Habitat (EFH) Environmental Impact Statement (EIS)
12. Update on Groundfish Fishery Management Plan (FMP) Programmatic EIS
13. Final Adoption of Amendment 16–1 (Environmental Assessment) and Amendment 16–2 (Draft EIS and Regulatory Analyses) for Darkblotched Rockfish, Pacific Ocean Perch, Canary Rockfish, and Lingcod
14. Adoption of a Proposed Range for 2004 Groundfish Management Measures
15. Alternative Long-term Groundfish Management Strategies

C. Salmon Management

1. Salmon Fishery Update
2. Mitchell Act Update
3. Progress Report on the Establishment of the Model Evaluation Work Group

D. Habitat1. Current Habitat Issues

E. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Mackerel Harvest Guidelines for 2003 through 2004

F. Highly Migratory Species Management

1. NMFS Report on Highly Migratory Species Management
2. Potential Reconsideration of FMP Preferred Alternatives for High Seas Longline Fishing Regarding Turtle Impacts

G. Marine Reserves1. Planning for Federal Waters Portion of the Channel Islands National Marine Sanctuary2. Central California Sanctuary Processes Including Krill Ban

H. Administrative Matters

1. Legislative Matters
2. Fiscal Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums
4. Staff Work Load Priorities and September 2003 Council Meeting Agenda

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, JUNE 15, 2003

Groundfish Advisory Subpanel - 1 p.m.
Groundfish Management Team - 1 p.m.
Scientific and Statistical Committee - 1 p.m.

MONDAY, JUNE 16, 2003

Council Secretariat - 8 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Scientific and Statistical Committee - 8 a.m.
Joint Session of the Enforcement Consultants, Groundfish Advisory Subpanel, Groundfish Management Team, and Scientific and Statistical Committee. Briefings on Stock Assessment Reviews for 2004 Groundfish Fisheries and Observer Data Status - 8:30 a.m.- noon
Habitat Committee - 10 a.m.
Legislative Committee - 10 a.m.
Budget Committee - 1 p.m.

TUESDAY, JUNE 17, 2003

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Scientific and Statistical Committee -8 a.m.
Enforcement Consultants - Immediately following Council session

WEDNESDAY, JUNE 18, 2003

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Enforcement Consultants - As necessary

THURSDAY, JUNE 19, 2003

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Enforcement Consultants - As necessary

FRIDAY, JUNE 20, 2003

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Enforcement Consultants - As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 23, 2003.

Richard W. Surdi,

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

[FR Doc. 03–13555 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003A]

Endangered Species; File No. 1352

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Colin Simpfendorfer, Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, Florida 34236 has been issued a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 25, 2001, notice was published in the **Federal Register** (66 FR 53983) that a request for a scientific research permit to take smalltooth sawfish had been submitted by Dr. Colin Simpfendorfer, Mote Marine Laboratory. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Simpfendorfer is authorized to take endangered smalltooth sawfish by capture using longline, rod and reel, set lines, gillnets, and beach seines; tagging with rototags, plastic headed dart tags, PIT tags, acoustic tags, PAT tags, and SPOT tags; and the collecting of tissue biopsies. This is to take place on the coast of central and southern Florida over 5 years. The purpose of the proposed research is to compile data on biology, distribution, and abundance of smalltooth sawfish through tracking and genetic sampling in order to facilitate the recovery of the species.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 23, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–13557 Filed 5–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: June 16–18, 2003.

Place: The Hilton, Lafayette, Lafayette, Louisiana.

Time: 2 p.m. to 6 p.m. (June 16, 2002); 8 a.m. to 4:45 p.m. (June 17, 2002); 8 a.m. to 11 a.m. (June 18, 2003).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Thomas W. Richardson, Acting Executive Secretary, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The theme of the meeting is ''Louisiana Coastal Area Ecosystem Restoration.'' On Monday, June 16, members of the Board will tour the Louisiana Coastal are a via helicopter. On Tuesday, June 17, presentations will be made pertaining to the theme. The presentations include: ''Coastal Engineering Priorities from the Louisiana Governor's Office Perspective,'' ''Overview of the Louisiana Comprehensive Coast-wide Ecosystem Restoration Study,'' ''Coastal Engineering Research Needs—The State Perspective,'' Louisiana Coastal Area (LCA) Study Hydrodynamic and Ecological Modeling,'' Technology Needs: Lessons Learned from Feasibility Study and Process for Identifying Future Needs,'' ''Coastal Engineering Needs for the Louisiana Coastal Zone,'' National Technical Review Committee Research Needs,'' ''Science Needs in Coastal Louisiana,'' and ''LCA-Related Coastal Engineering Research Needs at the Macro Scale.'' On Wednesday, June 18, the Board will meeting in an Executive Session.

These meetings are open to the public; participation by the public is scheduled for 4 p.m. on June 17.

The entire meeting is open to the public, but since searing capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Thomas W. Richardson,

Director, Coastal and Hydraulics Laboratory, Acting Executive Secretary.

[FR Doc. 03–13598 Filed 5–29–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10 a.m. to 12 p.m. on Thursday, June 12, 2003.

ADDRESSES: The meeting will be in room 107–A of the U.S. Department of Agriculture's Whitten Building located on Jefferson Drive between 12th and 14th Streets, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include revision of the Council's operating procedures, status reports on the interagency workgroup's review of existing trends information, monitoring data standards, and the process for soliciting proposals for estuary habitat restoration projects.

Current security measures require that persons interested in attending the meeting must pre-register with us before 4 p.m. EDT on Monday, June 9, 2003. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. All attendees are required to show valid photo identification, such as a government badge or current driver's license. Attendee's bags and other possessions are subject to being searched.

Luz L. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–13599 Filed 5–29–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Navy Case No. 83860 and Navy Case No. 84146 entitled ''Internal Locking Device for Use on Magazine Doors.''

ADDRESSES: Requests for copies of the Navy Case Numbers cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Ave., SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, Head, Technology Transfer Office, NRL, Code 1004, 4555 Overlook Ave., SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: May 20, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13585 Filed 5–29–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Diversified Technology and Development, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby give notice of its intent to grant to Diversified Technology and Development, Inc. a revocable, nonassignable, exclusive license in the United States, to Navy Case No. 83860 and Navy Case No. 84146 entitled ''Internal Locking Device for Use on Magazine Doors.''

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. A. David Spevack, Supervisory Associate Counsel, Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007, E-Mail: *spevacd@onr.navy.mil* or fax (703) 696–6909.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: May 20, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13586 Filed 5–29–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Wartsila-Lips, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Wartsila-Lips, Inc. a revocable, non-assignable, exclusive license in the United States to practice these Government-owned inventions in the field of use of shipboard mechanical seals, rudder stock seals, fin stabilizer seals, bulkhead seals, bow thruster seals, and pump seals, and described in: U.S. Patent No. 5,025,849, entitled ''Centrifugal Casting of Composites,'' issued June 25, 1991, Navy Case No. 70,890//U.S. Patent No. 6,129,134, entitled ''Synthesis of Metal Matrix Composite,'' issued October 10, 2000, Navy Case No. 79,069//U.S. Patent No. 6,129,135, entitled ''Fabrication of Metal-Matrix Compositions,'' issued October 10, 2000, Navy Case No. 77,732.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Carderock Division, Naval Surface Warfare Center, Code 3900, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, telephone (301) 227–4299.

Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: May 15, 2003.

P.C. Leblanc,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–13584 Filed 5–29–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal need analysis methodology for the 2004–2005 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2004–2005 under Part F of Title IV of the Higher Education Act (HEA) of 1965, as amended (Title IV, HEA Programs). An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV, HEA Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Management and Program Analysis, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3231. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2004–2005 the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2002 and December 2003. However, since the Secretary must publish these tables before December 2003, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 2002. The Secretary estimates that the increase in the Consumer Price Index for all Urban Consumers for the period December 2002 through December 2003 will be 2.2 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table on asset protection allowance as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2004–2005 has been updated in section 3 of this notice.

Section 477(b)(5) of Part F of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services. However, the Secretary has determined that the magnitude of the marginal differences in the applicable employment expenses adjusted for inflation does not support increasing the amount of the Employment Expense Allowance. Furthermore, because the statute does not provide for a reduction in this allowance, it will remain the lesser of $3,000 or 35% of the earned income for the 2004–2005 award year.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The income protection allowance for the dependent student is $2,420. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2004–2005 are:

Family size	Number in college				
	1	2	3	4	5
2	13,700	11,350	.....	.....	.....
3	17,060	14,730	12,380	.....	.....
4	21,070	18,720	16,390	14,050	.....
5	24,860	22,510	20,180	17,840	15,510
6	29,070	26,730	24,400	22,060	19,730

For each additional family member add $3,280.
For each additional college student subtract $2,330.

The income protection allowances for independent students and independent students without dependents other than a spouse for award year 2004–2005 are:

Marital status	Number in college	
Single	1	$5,490
Married	2	5,490
Married	1	8,780

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students, independent students without

dependents other than a spouse, and independent students with dependents other than a spouse.

If the Net Worth of a Business or Farm is --				Then the Adjusted Net Worth is --				
Less than		$1	.....	$0				
$1	to	$100,000	.....	$0	+	40%	of NW	
$100,001	to	$295,000	.....	$40,000	+	50%	of NW over	$100,000
$295,001	to	$490,000	.....	$137,500	+	60%	of NW over	$295,000
$490,001	or more	.....	.....	$254,500	+	100%	of NW over	$490,000

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

BILLING CODE 4000–01–P

Dependent Students

If the age of the older parent is		And there are	
		Two parents	One parent
		Then the education savings and asset protection allowance is--	
25	or less	0	0
26		2,500	1,200
27		5,000	2,300
28		7,400	3,500
29		9,900	4,700
30		12,400	5,900
31		14,900	7,000
32		17,400	8,200
33		19,800	9,400
34		22,300	10,600
35		24,800	11,700
36		27,300	12,900
37		29,800	14,100
38		32,200	15,300
39		34,700	16,400
40		37,200	17,600
41		38,100	18,100
42		39,100	18,400
43		40,100	18,900
44		41,100	19,200
45		42,100	19,700
46		43,200	20,100
47		44,200	20,500
48		45,300	21,000
49		46,500	21,500
50		47,900	22,000
51		49,100	22,600
52		50,300	23,100
53		51,800	23,700
54		53,100	24,200
55		54,700	24,800
56		56,000	25,400
57		57,700	26,100
58		59,400	26,700
59		61,200	27,500
60		63,000	28,100
61		65,200	28,900
62		67,100	29,800
63		69,000	30,600
64		71,300	31,400
65	and over	73,700	32,300

Independent Students Without Dependents Other Than a Spouse

If the age of the student is		And the student is	
		Married	Single
		Then the education savings and asset protection allowance is--	
25	or less	0	0
26		2,500	1,200
27		5,000	2,300
28		7,400	3,500
29		9,900	4,700
30		12,400	5,900
31		14,900	7,000
32		17,400	8,200
33		19,800	9,400
34		22,300	10,600
35		24,800	11,700
36		27,300	12,900
37		29,800	14,100
38		32,200	15,300
39		34,700	16,400
40		37,200	17,600
41		38,100	18,100
42		39,100	18,400
43		40,100	18,900
44		41,100	19,200
45		42,100	19,700
46		43,200	20,100
47		44,200	20,500
48		45,300	21,000
49		46,500	21,500
50		47,900	22,000
51		49,100	22,600
52		50,300	23,100
53		51,800	23,700
54		53,100	24,200
55		54,700	24,800
56		56,000	25,400
57		57,700	26,100
58		59,400	26,700
59		61,200	27,500
60		63,000	28,100
61		65,200	28,900
62		67,100	29,800
63		69,000	30,600
64		71,300	31,400
65	and over	73,700	32,300

Independent Students With Dependents Other Than a Spouse

If the age of the student is		And the student is	
		Married	Single
		Then the education savings and asset protection allowance is--	
25	or less	0	0
26		2,500	1,200
27		5,000	2,300
28		7,400	3,500
29		9,900	4,700
30		12,400	5,900
31		14,900	7,000
32		17,400	8,200
33		19,800	9,400
34		22,300	10,600
35		24,800	11,700
36		27,300	12,900
37		29,800	14,100
38		32,200	15,300
39		34,700	16,400
40		37,200	17,600
41		38,100	18,100
42		39,100	18,400
43		40,100	18,900
44		41,100	19,200
45		42,100	19,700
46		43,200	20,100
47		44,200	20,500
48		45,300	21,000
49		46,500	21,500
50		47,900	22,000
51		49,100	22,600
52		50,300	23,100
53		51,800	23,700
54		53,100	24,200
55		54,700	24,800
56		56,000	25,400
57		57,700	26,100
58		59,400	26,700
59		61,200	27,500
60		63,000	28,100
61		65,200	28,900
62		67,100	29,800
63		69,000	30,600
64		71,300	31,400
65	and over	73,700	32,300

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4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for dependent students and one for independent students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents, adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is --				Then the Contribution is --				
Less than -$3,409			.....	-$750				
($3,409)	to	$12,200	.....			22%	of AAI	
$12,201	to	$15,400	.....	$2,684	+	25%	of AAI over	$12,200
$15,401	to	$18,500	.....	$3,484	+	29%	of AAI over	$15,400
$18,501	to	$21,600	.....	$4,383	+	34%	of AAI over	$18,500
$21,601	to	$24,700	.....	$5,437	+	40%	of AAI over	$21,600
$24,701	or more	.....	.....	$6,677	+	47%	of AAI over	$24,700

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is --				Then the Contribution is --				
Less than -$3,409			.....	-$750				
($3,409)	to	$12,200	.....			22%	of AAI	
$12,201	to	$15,400	.....	$2,684	+	25%	of AAI over	$12,200
$15,401	to	$18,500	.....	$3,484	+	29%	of AAI over	$15,400
$18,501	to	$21,600	.....	$4,383	+	34%	of AAI over	$18,500
$21,601	to	$24,700	.....	$5,437	+	40%	of AAI over	$21,600
$24,701	or more	.....	.....	$6,677	+	47%	of AAI over	$24,700

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-worker family compared to a one-worker family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The Secretary is not increasing this allowance for the 2004–2005 award year for the reasons stated above. The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* This allowance for State and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

Parents of Dependent Students		
If parents' State or territory of residence is--	And parents' total income is--	
	less than $15,000	**$15,000 or more**
	Then the percentage is--	
South Dakota, Tennessee, Wyoming	1	0
Alaska, Florida, Louisiana, Nevada, North Dakota, Texas, Washington	2	1
Alabama, Arkansas, Mississippi, New Mexico, West Virginia	3	2
Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, South Carolina	4	3
Georgia, Idaho, Kentucky, Michigan, Montana, North Carolina, Ohio, Utah, Vermont, Virginia	5	4
California, Connecticut, Maine, Massachusetts, Minnesota, Rhode Island, Wisconsin	6	5
District of Columbia, Maryland, New Jersey, Oregon	7	6
New York	8	7
Other	3	2

Independent Students With Dependents Other Than a Spouse		
If student's State or territory of residence is--	And student's total income is--	
	less than $15,000	**$15,000 or more**
	Then the percentage is--	
South Dakota, Tennessee, Wyoming	1	0
Alaska, Florida, Louisiana, Nevada, North Dakota, Texas, Washington	2	1
Alabama, Arkansas, Mississippi, New Mexico, West Virginia	3	2
Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, South Carolina	4	3
Georgia, Idaho, Kentucky, Michigan, Montana, North Carolina, Ohio, Utah, Vermont, Virginia	5	4
California, Connecticut, Maine, Massachusetts, Minnesota, Rhode Island, Wisconsin	6	5
District of Columbia, Maryland, New Jersey, Oregon	7	6
New York	8	7
Other	3	2

Dependent Students	
If student's State or territory for residence is--	The percentage is--
Alaska, Florida, South Dakota, Tennessee, Texas, Washington, Wyoming	0
Louisiana, Nevada, New Hampshire, North Dakota	1
Alabama, Illinois, Mississippi, West Virginia	2
Arizona, Arkansas, Colorado, Delaware, Georgia, Indiana, Iowa Kansas, Michigan, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Carolina, Vermont, Virginia	3
Connecticut, Hawaii, Idaho, Kentucky, Maine, Massachusetts, Minnesota, New Jersey, North Carolina, Ohio, Rhode Island, Utah, Wisconsin	4
California, Maryland, New York, Oregon	5
District of Columbia	6
Other	2

Independent Students Without Dependents Other Than a Spouse	
If student's State or territory for residence is--	The percentage is--
Alaska, Florida, South Dakota, Tennessee, Texas, Washington, Wyoming	0
Louisiana, Nevada, New Hampshire, North Dakota	1
Alabama, Illinois, Mississippi, West Virginia	2
Arizona, Arkansas, Colorado, Delaware, Georgia, Indiana, Iowa Kansas, Michigan, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Carolina, Vermont, Virginia	3
Connecticut, Hawaii, Idaho, Kentucky, Maine, Massachusetts, Minnesota, New Jersey, North Carolina, Ohio, Rhode Island, Utah, Wisconsin	4
California, Maryland, New York, Oregon	5
District of Columbia	6
Other	2

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; William D. Ford Federal Direct Loan Program, 84.268)

Dated: May 28, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–13680 Filed 5–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–623–000 and ER03–623–001]

Jamaica Bay Peaking Facility, LLC; Notice of Issuance of Order

May 21, 2003.

Jamaica Bay Peaking facility, LLC (Jamaica Bay) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity, energy and certain ancillary services at market-based rates. Jamaica Bay also requested waiver of various Commission regulations. In particular, Jamaica Bay requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Jamaica Bay.

On May 19, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Jamaica Bay should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 18, 2003.

Absent a request to be heard in opposition by the deadline above, Jamaica Bay are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Jamaica Bay, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Jamaica Bay's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13483 Filed 5–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–296–000 and CP03–298–000]

NGO Transmission, Inc.; Notice of Application

May 22, 2003.

Take notice that on May 13, 2003, NGO Transmission, Inc. (NGO Transmission), 1500 Granville Road, Newark, Ohio 43058–4970, filed with the Federal Energy Regulatory Commission (Commission) in Docket No. CP03–296–000, an abbreviated application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing the acquisition, ownership, and operation of certain existing natural gas pipeline and storage facilities located in central Ohio, as more fully described in the application. NGO Transmission also requests in Docket No. CP03–298–000, that the Commission issue a blanket certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and under part 157, Subpart F of the Commission's regulations. NGO Transmission further requests that the Commission act on its application by October 1, 2003, so that the reorganization can be completed by the start of the 2003/2004 winter heating season.

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 excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any questions regarding this application should be directed to Ned Hengerer or Douglas John, Counsel for NGO Transmission, Inc., John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036–3013, electronic mail: *ehengerer@jhenergy.com,* phone: (202) 429–8811, fax: 202–429–8805.

Specifically, NGO Transmission, a single member cooperative, requests authorization to acquire, own, and operate approximately 171 miles of existing small and medium diameter natural gas pipeline and three connected storage facilities with an aggregate peak day transportation

throughput capacity of 76,773 MMBtu/d and total storage capacity of 6,047,130 MMBtu and 43,260 MMBtu/d peak withdrawal rate. NGO states that no new facilities are to be constructed. The existing facilities are currently owned by an affiliated local distribution company, National Gas and Oil Cooperative (NGO), and operated as Hinshaw facilities exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act. Upon receipt of the requested certificate, NGO states that it will transfer the transportation and storage facilities to NGO Transmission through an internal business reorganization and NGO Transmission will commence stand-alone interstate transportation and storage service. NGO asserts that it will retain and continue to operate its local distribution facilities. NGO states that this internal reorganization is intended to enable NGO to separately account for and recover upstream transportation and storage costs through a gas cost rate (GCR) mechanism that is similar to those used by other Ohio local distribution companies, including those with whom NGO competes.

NGO Transmission states that the internal reorganization will neither degrade existing services nor alter the historical function of the facilities that are to be acquired, namely, the transportation and/or storage of natural gas on behalf of NGO and two other affiliated entities that produce and/or market natural gas in the area. NGO states that no other shippers receive service. To preserve the unique and strictly local nature of the system's existing operations, NGO Transmission requests that the Commission waive the regulatory requirements stated in part 284 to operate on an open access basis, as well as the Standards of Conduct imposed on pipelines with affiliated marketing entities under part 161. If the Commission determines that an unconditional waiver of part 284 is inappropriate, NGO Transmission is willing to accept a conditional waiver under which it would commit to filing a part 284 open access tariff upon receiving a bona fide request for service from an unaffiliated entity.

NGO Transmission proposes to replicate NGO's existing use of the facilities by providing, on a contractual part 157 basis, bundled firm transmission and storage no-notice service with a monthly cost-based reservation rate of $4.03 per MMBtu. NGO Transmission also proposes to provide to affiliates Producers Gas Sales, Inc. and NGO Development Corporation contractual interruptible transportation service at a 100% load factor rate of 6.6 per MMBtu transported and contractual interruptible storage service at a 100% load factor rate of 7 per MMBtu stored per month.

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 stated below, 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 Natural Gas Act (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 their 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 Commission's review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Names of commenters will be placed on the Commission's environmental mailing list, will receive copies of any environmental documents, and will be notified of meetings associated with the Commission's environmental review process, if any. 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, if any) and will not have the right to seek court review of the Commission's final order. Thus, 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.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Due Date: June 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13481 Filed 5–29–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–91–000, et al.]

Flying Cloud Power Partners, LLC, et al.; Electric Rate and Corporate Filings

May 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Flying Cloud Power Partners, LLC, Heartland Wind LLC, Clipper Windpower Development, Company, Inc.

[Docket No. EC03–91–000]

Take notice that on May 15, 2003, Flying Cloud Power Partners, LLC (Flying Cloud), Heartland Wind LLC (Heartland Wind), and Clipper Windpower Development Company, Inc. (Clipper Development) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations for authorization of a disposition of jurisdictional facilities (the Application). Applicants state that they seek Commission authorization in connection with the transfer of 100 percent of the stock of Flying Cloud from Clipper Development to Heartland Wind. Applicants state that they are

engaged in the business of developing, and will construct, own and operate, a 43.5 MW wind power generation facility located in Dickinson County, Iowa. Applicants further state that their jurisdictional assets are assumed, for purposes of the Application, to include rate schedules, a wholesale power purchase agreement, an interconnection agreement, and other assets that are necessary to effectuate wholesale sales of electricity. Applicants also request confidential treatment of certain documents submitted therewith.

Comment Date: June 5, 2003.

2. Allegheny Energy Supply Company, LLC, Constellation Power Source, Inc.

[Docket No. EC03–92–000]

Take notice that on May 15, 2003, Allegheny Energy Supply Company, LLC (AE Supply) and Constellation Power Source, Inc. (CPSI) (together, the Applicants) filed a joint application for disposition of jurisdictional facilities under Section 203 of the Federal Power Act. The Applicants request Commission approval for AE Supply to transfer and assign to CPSI a wholesale power sales contract.

Comment Date: June 5, 2003.

3. Rumford Power Associates, Limited Partnership

[Docket No. ER00–2080–001]

Take notice that on May 19, 2003, Rumford Power Associates Limited Partnership submitted for filing its triennial market analysis update in compliance with the Commission Order issued in Docket No. ER00–2080–000 on May 17, 2000.

Comment Date: June 9, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–159–003]

Take notice that on May 19, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a substitute revised service agreement in compliance with the Commission's May 2, 2003 order in Docket No. ER03–159–000, *et al.* Dominion Virginia Power states that the substitute revised service agreement removes language from the Master Power Purchase and Sale Agreement between the Company and Dominion Retail as filed on November 5, 2000, consistent with the Commission's instructions, and also includes a technical change. Dominion Virginia Power indicates that the service agreement provides for sales of capacity and energy under Dominion Virginia Power's cost-based power sales tariff, FERC Electric Tariff No. 7, to its affiliate, Dominion Retail, Inc.

Dominion Virginia Power states that copies of the filing were served on the Virginia State Corporation Commission.

Comment Date: June 9, 2003.

5. ISG Sparrows Point Inc.

[Docket No. ER03–852–000]

Take notice that on May 19, 2003, ISG Sparrows Point Inc., (ISG Sparrows Point) submitted to the Commission a Notice of Succession notifying the Commission that it has succeeded to the Rate Schedule FERC No. 2 of Bethlehem Steel Corp (Rate Schedule). ISG Sparrows Point states that it filed the Rate Schedule, updated as appropriate and is in conformance with Commission Order No. 614, as IGS Sparrows Point Rate Schedule FERC No. 2.

Comment Date: June 9, 2003.

6. Dominion Retail, Inc.

[Docket No. ER03–853–000]

Take notice that on May 19, 2003, Dominion Retail, Inc., tendered for filing proposed FERC Electric Tariff No. 1, a wholesale cost-based rate tariff, together with a pro-forma service agreement under that Tariff, for wholesale sales of capacity and energy. Dominion Retail asks that the proposed Tariff be made effective sixty (60) days after the date of its filing.

Comment Date: June 9, 2003.

7. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–856–000]

Take notice that on May 19, 2003, Deseret Generation & Transmission Co-operative, Inc., submitted an informational filing, providing the exact amount paid as a 2002 Rate Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC Electric Tariff, Original Volume No. 1.

Comment Date: June 9, 2003.

8. Consumers Energy Company

[Docket No. ES03–37–001]

Take notice that on May 15, 2003, Consumers Energy Company (Consumers) submitted an amendment to its original proceeding, under section 204 of the Federal Power Act. In the amendment, Consumers provides additional information required by the Commission's regulations that was omitted in the original proceeding.

Comment Date: June 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13482 Filed 5–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–68–000, et al.]

Katahdin Transmission, LLC, et al.; Electric Rate and Corporate Filings

May 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Katahdin Transmission, LLC

[Docket No. EG03–68–000]

Take notice that on May 16, 2003, Katahdin Transmission, LLC (KT LLC) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Federal Energy Regulatory Commission's regulations.

KT LLC states that it is a Delaware limited liability company that will own and simultaneously lease to Great Lakes Hydro America, LLC (GLHA), a company with exempt wholesale

generator status, certain interests in equipment that will comprise a discrete portion of a new 115 kV interconnection project, which will, operationally, become part of an existing ''eligible facility'' owned and operated by GLHA in Millinocket and East Millinocket, Maine.

Comment Date: June 12, 2003.

2. Entergy Services Inc.

[Docket No. ER98–4190–002]

Take notice that on May 19, 2003, Entergy Services, Inc. (ESI), on behalf of System Energy Resources, Inc., made an informational filing with the Federal Energy Regulatory Commission pursuant to section 205 of the Federal Power Act revising the authorized accelerated amortization under the Grand Gulf Accelerated Recovery Tariff—Mississippi (GGART–M) in accordance with the terms and conditions of Paragraph 4.B of GGART–M. ESI states that it is making this filing with the approval of the Mississippi Public Service Commission (the MPSC).

Comment Date: June 9, 2003.

3. Texas Electric Marketing, LLC

[Docket No. ER00–1780–002]

Take notice that on May 19, 2003, Texas Electric Marketing, LLC (TEM) submitted for filing with the Federal Energy Regulatory Commission its triennial updated market analysis in accordance with Appendix B of the Commission's May 18, 2000 Letter Order in Texas Electric Marketing, LLC, Docket Nos. ER00–1780–000 and ER00–1780–001, granting TEM authority to engage in market-based wholesale electric power sales transactions.

Comment Date: June 9, 2003.

4. Inland Power & Light Company

[Docket No. ER02–2001–000]

Take notice that on March 19, 2003, Inland Power & Light Company filed a Request for Waiver of Order No. 2001 Electric Quarterly Report Requirements.

Comment Date: June 12, 2003.

5. Carolina Power & Light Company Florida Power Corporation

[Docket No. ER03–540–004]

Take notice that on May 20, 2003, Carolina Power & Light Company and Florida Power Corporation, tendered for filing corrected redlined versions of the tariff sheets that it filed on May 15, 2003. Carolina Power & Light Company states that the May 15th filing implemented changes to the Companies' Open Access Transmission Tariffs in compliance with the Commission's Order of May 9, 2003 and the current filing revises only the redlined pages that were included in the May 15th filing.

Carolina Power & Light Company states that copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: June 10, 2003.

6. Duke Energy Fayette, LLC

[Docket No. ER03–794–001]

Take notice that on May 20, 2003, Duke Energy Fayette, LLC (Duke Fayette) tendered for filing its amended tariff and supplemental supporting cost data for its Monthly Revenue Requirement (Fayette Tariff) under PJM Interconnection, L.L.C.''s (PJM) Schedule 2—Reactive Supply and Voltage Control from Generation Sources Service. Duke Fayette requests an effective date of the first day of the month immediately following the Commission's acceptance of this filing to correspond to PJM's billing cycle. Duke Fayette states that it has served copies of the filing on the Pennsylvania Public Utilities Commission, PJM and Allegheny Power.

Comment Date: June 2, 2003.

7. New York State Electric & Gas Corporation

[Docket No. ER03–857–000]

Take notice that on May 20, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission an executed Interconnection Agreement between NYSEG and Bio-Energy Partners (Bio-Energy) that sets forth the terms and conditions governing the interconnection between Bio-Energy's generating facility in Monroe County, New York and NYSEG's transmission system.

NYSEG states that copies of this filing have been served upon Bio-Energy, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: June 10, 2003.

8. Entergy Services, Inc.

[Docket No. ER03–861–000]

Take notice that on May 20, 2003, Entergy Services, Inc. (Entergy Services), acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 2003 annual rate redetermination update (Update) in accordance with its Open Access Transmission Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Entergy Services further states that copies of the Update have been served upon its transmission customers and its state and local regulatory commissions.

Comment Date: June 10, 2003.

9. American Electric Power Service Corporation

[Docket No. ER03–862–000]

Take notice that on May 20, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Letter Agreement between Indiana Michigan Power Company and Northern Indiana Public Service Company. AEPSC requests an effective date of May 19, 2003.

AEPSC states that a copy of the filing was served upon Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: June 10, 2003.

10. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER03–863–000]

Take notice that on May 20, 2003, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed an Interconnection Agreement (Agreement) with Allegheny Energy Supply Company LLC as First Revised Service Agreement No. 341 under Allegheny Power's Open Access Transmission Tariff. The Allegheny Power request an effective date for First Revised Service Agreement No. 341 of July 1, 2002.

Allegheny Power states that copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: June 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13515 Filed 5–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

May 22, 2003.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 906.

c. *Date Filed:* May 19, 2003.

d. *Submitted By:* Virginia Electric and Power Company, d.b.a. Virginia Dominion Power—current licensee.

e. *Name of Project:* Cushaw Hydroelectric Project.

f. *Location:* On the James River in Amherst County, Virginia. The project occupies federal land within the Jefferson National Forest.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* James Thornton, Dominion Virginia Power, (Manager for Licensee), Innsbrook Technical Center, 1 NE., 5000 Dominion Boulevard, Glen Allen, VA 23060, (804) 273–3257.

i. *FERC Contact:* Janet Hutzel, janet.hutzel@ferc.com, (202) 502–8675.

j. *Effective date of current license:* September 1, 1980.

k. *Expiration date of current license:* June 15, 2008.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 1,550-foot-long, 27-foot-high concrete dam; (2) a 138-acre reservoir; (3) a powerhouse containing five turbine generating units with a total installed capacity of 7,500 kW; and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 15, 2006.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/esubscribenow.htm* 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. 03–13484 Filed 5–29–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0011; FRL–7305–4]

Endocrine Disruptor Screening Program; Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Request for Nominations for Membership

AGENCY: Environmental Protection Agency (EPA).

ACTIONS: Notice.

SUMMARY: As mandated by the Federal Food, Drug, and Cosmetic Act (FFDCA), amended by the Food Quality Protection Act (FQPA) of 1996, EPA implemented an Endocrine Disruptor Screening Program (EDSP). As part of the EDSP, the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) was established in 2001, is a Subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT). The members of the EDMVS may serve up to three 2–year terms. This notice is a request for nominations for new members of the EDMVS from interested organizations. NACEPT is a chartered federal advisory committee subject to the provisions of the Federal Advisory Committee Act (FACA). Through NACEPT, the EDMVS provides technical advice and recommendations to EPA regarding validation of the Tier I screening and Tier II testing methods for the EDSP. Background information regarding the Agency's EDSP and the EDMVS are discussed in Unit III. of the **SUPPLEMENTARY INFORMATION**. This information is being provided to allow interested persons and organizations to review the scope of activities when nominating qualified individuals for membership on the EDMVS.

DATES: Nominations, identified by docket ID Number OPPT–2003–0011 must be received on or before June 30, 2003.

ADDRESSES: Nominations for membership may be submitted electronically, by fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit II. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20406–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jane Smith, Designated Federal Official (DFO) for the EDMVS, Exposure Assessment Coordination and Policy Division (7203M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax (202) 564–8483; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. You may be interested in nominating members to the

subcommittee set forth in this notice if you are a member of an environmental/public interest organization, a public health organization, an animal welfare organization, academia, or Federal agencies, state, local, or tribal governments. You also may be interested in activities of EPA's EDSP if you produce, manufacture, use, consume, work with, or import pesticides or other chemicals. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the FFDCA, as amended by the FQPA of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0011. This official public docket consists of this Notice, public comments regarding this Notice, and other related information. 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 EPA's Docket Center, Rm. B102 - Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0282.

2. *Electronic access*. An electronic version of the public docket is available through EPA's electronic docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit nominations and comments 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 edocket system, select ''search,'' then key in the appropriate docket ID number (OPPT–2003–0011). 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.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*, or you may obtain electronic copies of this document, and certain other related documents through the EDSP Web site for the EDMVS at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm*.

3. *In person*. The Agency has established an administrative record for the EDMVS under docket ID number OPPT–2003–0011. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the EPA Docket Center. See I.B.1. for docket center information.

II. How Can I Nominate Potential Members to the Endocrine Disruptor Methods Validation Subcommittee?

You may nominate technically qualified persons for membership to the EDMVS electronically, by fax or in person/courier service. A technically qualified nominee could come from industry, an environmental/public interest organization, a public health organization, an animal welfare organization, academia or Federal agencies, State, local or tribal governments or any other group knowledgeable in endocrine disruption, method validation or related topics. Nominations for membership may be submitted by individuals or on behalf of organizations, and must include a curriculum vitae of the nominee detailing his or her specific area of relevant scientific expertise. (Please exclude the following information from the curriculum vitae: The nominee's social security number, birth date and place, home address, and telephone number.) Technically qualified persons may also nominate themselves. Current members whose terms are about to expire may be renominated or self-nominate as their time and interests allow. Current members being renominated will be evaluated in the same manner as newly nominated candidates. Members of the EDMVS are selected by EPA taking into consideration their relevant scientific expertise and diversity of perspectives on mammalian, ecological, and *in vitro* endocrine disruptor screening and testing methods and procedures, toxicity test methods standardization and validation, and chemical and pesticide regulatory processes. Members will be appointed for 2 years. In appointing members, EPA will seek to achieve balanced representation from among the following sectors: the agrichemical and commodity chemical industries; environmental/public interest organizations; public health organizations; animal welfare organizations; Federal agencies; State, local and tribal governments; academia; consumers, and the public.

Nominations must be received by EPA on or before June 30, 2003. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2003–0011 in the subject line on the first page of your submission. Do not include the nominee's private information, such as, social security number, birth date and place, home address, and telephone number. You may submit your nomination electronically, by fax, in person, or by courier. We normally would accept requests by mail, but in this time of delays in delivery of Federal government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner.

1. *Electronically*. You may submit your nomination electronically. Do not submit any information electronically that you consider to be CBI or information protected under the Privacy Act. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption.

i. *EPA docket*. You may use EPA's electronic public docket to submit a nomination. Go to EPA Dockets at, *http://www.epa.gov/edocket*, and follow the online instructions for submitting materials. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0011. Please see Unit I.B.1.

ii. *E-mail*. Nominations may be sent by e-mail to the technical contact listed under **FOR FURTHER INFORMATION CONTACT**, or directly to the docket at *oppt.ncic@epa.gov*, Attention: Docket ID number OPPT–2003–0011.

iii. Disk or CD ROM. You may submit nominations on a disk or CD ROM by courier or package service, such as Federal Express, to: the OPPT Document Control Office (DCO) in EPA East Building Room 6428, 1201 Constitution Ave., NW., Washington, DC, Attention: Docket ID number OPPT–2003–0011. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. These electronic

submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Do not submit any disk or CD ROM through the mail. Due to security measures, disks and CD ROMs risk being destroyed when handled as Federal government mail.

2. *By fax*. Send your nomination(s) to the technical contact identified under **FOR FURTHER INFORMATION CONTACT**.

3. *In person or by courier*. Deliver your nomination to: OPPT Document Control Office (DCO). See Unit II.1.iii. for Document Control Office information.

III. Background

A. Action

EPA's ongoing implementation of EDSP is science-driven, and supported by the recommendations and comments of knowledgeable scientists and stakeholders. Information on the EDMVS meetings to date, a list of the current members of the EDMVS, and other EPA EDSP-related information are available at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm*.

The EDMVS held it's initial meeting in October 2001. All 26 members started their membership with that meeting and 25 of the original members remain with the subcommittee. In October 2003, 25 of the current members will have served their initial 2–year term and may reapply to the subcommittee or not, as time and responsibilities may dictate.

The purpose of this **Federal Register** notice is to solicit nominations for scientists who would be interested in serving on this cutting edge subcommittee. You may nominate others and you may self-nominate. Qualifications for subcommittee membership are discussed in Unit II. of the **SUPPLEMENTARY INFORMATION**.

EPA hopes to announce its selection of members for the subcommittee's third and fourth years by September 2003.

B. The Purpose of the Endocrine Disruptor Methods Validation Subcommittee

1. *Purpose and authority*. The EDMVS was established in accordance with the FACA (5 U.S.C. app. 2 section 9(c)). The EDMVS is a subcommittee of EPA's NACEPT. The purpose of the EDMVS is to assist NACEPT in providing advice and counsel to EPA on scientific issues associated with the conduct of studies necessary for validation of Tier I and Tier II assays for EPA's EDSP. The EDMVS explores issues regarding: The development and choice of initial protocols; prevalidation study designs; validation study designs; the integration of prevalidation, and validation study results into EDSP Tier I and Tier II methods documents suitable for external peer review. All EDMVS recommendations are forwarded to the Agency through NACEPT. Taking into consideration this advice and recommendations, EPA will manage and conduct prevalidation and validation laboratory studies.

2. *Objective and scope of the activity*. The EDMVS and NACEPT provide a forum for diverse groups of individuals representing a broad range of interests to consult with and make recommendations to the Agency on matters relating to the development, optimization, and validation of endocrine disruptor screening and testing methods. The subcommittee will analyze issues, review data and protocols, compile information, make recommendations to the Agency through NACEPT, and undertake other activities necessary to meet its responsibilities. The complete Mission Statement is available at: *http://www.epa.gov/scipoly/oscpendo/edmvs.htm*, press enter and page down to ''EDMVS Subcommittee Mission Statement.''

3. *Meetings*. The EDMVS may hold up to six meetings a year. These meetings generally are held in Washington, DC and usually last for 2–3 days. Meeting materials to be discussed are distributed to members prior to the meetings. A regular employee of EPA acts as the DFO and will be present or represented at all meetings. All EDMVS meetings are called, announced, and held in accordance with FACA and NACEPT rules, which require open meetings and an opportunity for interested persons to file comments before or after meetings, or to make statements during the public meetings to the extent time permits. The date, time, location, and any public participation instructions for each meeting are announced in the **Federal Register** at least 15 days before the meeting date. Each meeting is conducted in accordance with an agenda. Meeting information and the agenda are posted on the Agency's web site as soon as available.

To date, the EDMVS has held six, meetings starting with a 2–day meeting October 30–31, 2001. Other face-to-face meetings were held; December 10–12, 2001; March 25–27, 2002; and July 23–24, 2002. There have been two 2–hour teleconferences, each on a single topic. There are face-to-face meetings planned for June 5–6, 2003 and August 19–21, 2003.

C. Establishment of the Endocrine Disruptor Screening Program

The complexity of the scientific and regulatory issues surrounding the endocrine disruptor issue led EPA to seek broad expert advice and counsel beyond the Agency. EPA held a public meeting in May of 1996 requesting advice on how to develop a scientifically defensible, pragmatic approach to endocrine disruptor screening and testing. The stakeholder feedback indicated that a broad based multi-sector stakeholder committee should be established under the FACA. Following a second public meeting and analysis of stakeholder interests (Keystone Center Convening Report), the Agency chartered the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC).

EDSTAC was charged with providing advice and recommendations to the Agency regarding a strategy for testing chemical substances to determine whether they may have an effect in humans similar to an effect produced by naturally occurring hormones. EDSTAC consisted of 39 representatives from industry, environmental and public health advocacy groups, state government, other Federal agencies, and academic scientists. Over a 2–year period, EDSTAC held eight meetings. In its final report (available at *http://www.epa.gov/scipoly/oscpendo/history/exesum14.pdf*), EDSTAC provided 71 consensus recommendations regarding an endocrine disruptor screening program.

EPA's EDSP was set forth in a notice published in the **Federal Register** of August 11, 1998 (63 FR 42852) (FRL–6021–3), and described in more detail in a proposed statement of policy published in the **Federal Register** of December 28, 1998 (FR 67 79611) (FRL–7286–6). The EDSP proposed statement of policy, was subsequently reviewed by a joint panel of the FIFRA Scientific Advisory Panel (SAP) and the EPA Science Advisory Board (SAB) in May 1999. The SAP/SAB issued a final report that concluded that a tiered approach relying on a combination of *in vivo* and *in vitro* screens for Tier I and a set of *in vivo* Tier II tests was scientifically reasonable.

D. Implementation of EPA's Endocrine Disruptor Screening Program

EPA's ongoing implementation of EDSP is science-driven, and supported by the recommendations and comments of EDSTAC, the SAP/SAB Joint Panel, and the EDMVS. The Agency's Implementation is currently proceeding on three fronts: Priority setting for

chemicals to be screened and tested: Prevalidation and validation studies on Tier I and Tier II assays; and developing policy and procedures to require endocrine disruptor testing.

1. *Priority setting.* Priority setting is a separate activity from the EDMVS. For the latest information on priority setting of chemicals for testing see **Federal Register** of December 30, 2002, (67 FR 79611) (FRL–7286–6) and docket ID number OPPT–2002–0066.

2. *Validation process.* As a charter member of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), EPA is following the interagency validation framework outlined in the ICCVAM report ''Validation and Regulatory Acceptance of Toxicological Test Methods'' for validating the EDSP screening and testing methods. The National Institute of Environmental Health Sciences (NIEHS) established ICCVAM as a standing committee of Federal agencies to coordinate and facilitate interagency validation, acceptance, and harmonization of toxicological test methods with an emphasis on reducing animal use, refining procedures involving animals to make them less stressful and replacing animals where scientifically appropriate.

The ICCVAM validation process was designed as a flexible, adaptable framework applicable to conventional and alternative methods, and to meet the needs of diverse test sponsors, Federal agencies and regulatory processes. EPA's EDSP is managing the validation process with substantial involvement of ICCVAM personnel.

Although there is widespread interest in EPA's EDSP, the screening and testing methods are being developed and validated with the specific goal of developing test guidelines for EPA regulatory use. The test guidelines will ultimately be used by chemical manufacturers, pesticide registrants, and other entities to develop data for submission to EPA in support of the Agency's statutorily mandated chemical risk management programs.

In addition to EPA's domestic EDSP validation program, certain screening assays and tests for international use are also being developed by the Organization for Economic Cooperation and Development (OECD) Test Guidelines Program. EPA is an active member of the OECD Test Guidelines Program activities, as well as the latter's Endocrine Disruptor Testing and Assessment Workgroup. EPA will rely upon the OECD mechanism for validating those EDSP screens and tests of international interest. The OECD, EPA, and ICCVAM have also mutually agreed to this administrative arrangement to ensure that all appropriate validation and peer review steps are achieved in both domestic and international efforts.

3. *Status of validation of the assays.* The table below shows the validation process steps that have been initiated on each of the assays.

Screens/Assays	Literature Review	Initial Protocol Demonstration	Prevalidation Studies	Validation Studies
Amphibian metamorphosis	X	X	X	
AR binding	X	X	X	
Aromatase	X	X	X	
ER binding	X	X	X	X
Fish reproductive	X	X	X	
Hershberger	X	X	X	
Pubertal female	X	X	X	
Pubertal male	X	X	X	
Steroidogenesis	X	X	X	
Uterotrophic (Tier ?)	X	X	X	X
Amphibian 2–generation development and reproduction test	X	X		
Avian 2–generation test	X	X	X	
Fish life-cycle test	X			
Mammalian 2–generation test		X	X	
Mysid life-cycle test	X	X	X	

4. *Policy and procedures workgroup.* The Agency has established a workgroup composed of scientists, economists, lawyers, and policy specialists from different EPA offices that is in the process of developing policy and procedures related to requiring endocrine disruptor testing.

List of Subjects

Environmental protection, Endocrine disruption, Endocrine disruptor screening program.

Dated: May 21, 2003.

Stephen Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–13432 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–6]

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 May 19, 2003 Through May 23, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030241, Draft EIS, FHW, MS, Airport Parkway Extension, Improvements to MS–475 from I–20 to Old Brandon Road, U.S. Army COE Section 404 Permit, Rankin County, MS, Comment Period Ends: July 14, 2003, Contact: Cecil Vick (601) 965–4217.

EIS No. 030242, Final EIS, NRC, FL, Generic EIS—License Renewal of Nuclear Plants for the St. Lucie Units 1 and 2, Supplement 11, NUREG–1437, Implementation, Hutchinson Island, St. Lucie County, FL, Wait Period Ends: June 30, 2003, Contact: Dr. Michael T. Masnik (301) 415–1191.

EIS No. 030243, Draft EIS, FHW, TX, Eastern Extension of the President George Bush Turnpike (PGBT) from State Highway 78 to Interstate Highway 30, Construction of a New Location Controlled-Access Tollway in the cities of Garland, Sachse, Rowlett, and Dallas in Dallas County, TX, Comment Period Ends: July 14, 2003, Contact: Patrick A. Bauer (512) 536–5960.

EIS No. 030244, Draft EIS, AFS, SD, Elk Bugs and Fuels Project, Proposal to Perform Vegetation Management to Reduce the Spread of Mountain Pine Beetles and the Threat and Severity of Potential Wildfires, Black Hills National Forest Land and Resource Management Plan, Northern Hills Ranger District, Black Hills National Forest, Lawrence and Meade Counties, SD, Comment Period Ends: July 14, 2003, Contact: Elizabeth Krueger (307) 283–1361.

EIS No. 030245, Final EIS, BLM, CA, Imperial Sand Dunes Recreation Area, Revising and Updating the Recreation Area Management Plan and Amendment to the California Desert Conservation Area Plan, Imperial County, CA, Wait Period Ends: June 30, 2003, Contact: Lynnette Elser (760) 337–4420.

EIS No. 030246, Final EIS, AFS, MT, Canyon Lake Dam and Wyant Lake Dam Project, Proposal to Authorize Access to their Facilities with Prescribe Terms and Conditions, Canyon Creek Irrigation District (CCID), Bitterroot National Forest, Selway Bitterroot Wilderness, Ravalli County, MT, Wait Period Ends: June 30, 2003, Contact: Pete Zimmerman (406) 363–7100.

EIS No. 030247, Draft EIS, CGD, LA, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 40 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA, Comment Period Ends: July 15, 2003, Contact: Mark Prescott (202) 267–0225.

EIS No. 030248, Draft EIS, USA, NY, Thomas Jefferson Hall and Other Construction Activities in the Cadet Zone of the United States Military Academy, Implementation, West Point, Hudson River Valley, Orange and Putnam Counties, NY, Comment Period Ends: July 14, 2003, Contact: Douglas R. Cubbison (845) 938–3522.

EIS No. 030249, Final Supplement, NOA, Pelagic Sargassum Habitat Fishery Management Plan, Implementation, Updated Information concerning the Public's Opportunity to Comment on Proposed Actions, South Atlantic Region, Wait Period Ends: June 30, 2003, Contact: Dr. Roy Crabtree (727) 570–5301.

EIS No. 030250, Draft EIS, FTA, FL, MIC/Earlington Heights Connector Study, Earlington Heights Metrorail Station to the Miami-Dade Intermodal Center (MIC) Transit Improvements, Funding and NPDES, U.S. Army COE Section 10 and U.S. Coast Guard Bridge Permits Issuance, Miami-Dade County, FL, Comment Period Ends: July 14, 2003, Contact: Ms Elizabeth B. Martin (404) 562–3509.

Amended Notices

EIS No. 030055, Draft EIS, FHW, TX, Grand Parkway/TX–99 Improvement Project, I–10 to US 290, Funding, Right-of-Way Grant U.S. Army COE Section 404 Permit Issuance, Harris County, TX, Comment Period Ends: June 13, 2003, Contact: John Mack (512) 536–5960. Revision of FR Notice Published on 2/14/2003: CEQ Comment Period Ending 5/23/2003 has been Extended to 6/13/2003

EIS No. 030142, Draft EIS, AFS, CA, Combined Array for Research in Millimeter-wave Astronomy (CARMA) Project, Construction, Reconstruction and Operation of 23 Antennas at the Juniper Flat Site, Special-Use-Permit Issuance, Inyo Mountain, Inyo National Forest, Inyo County, CA, Comment Period Ends: June 23, 2003, Contact: Colleen (Chaz) O'Brien (760) 873–2490. Revision of FR Notice Published on 4/4/2003: CEQ Comment Period Ending on 5/19/2003 has been Extended to 6/23/2003.

EIS No. 030162, Revised Draft EIS, DOE, Hanford Site Solid (Radioactive and Hazardous) Waste Program, New Information on Waste Management Alternatives, Waste Management Practices Enhancement for Low-Level Radioactive Waste, Mixed Low-Level Radioactive Waste and Transuranic Waste, Richland, Benton County, WA, Comment Period Ends: June 11, 2003, Contact: Michael S. Collins (800) 426–4914. Revision of FR Notice Published on 4/11/2003: CEQ Comment Period Ending 5/27/2003 has been Extended to 6/11/2003.

EIS No. 030213, Draft EIS, NRC, SC, H.B. Robinson Steam Electric Plant, Unit No. 2 (RNP), Application for Operating License Renewal of Nuclear Plants for 20-Year, Supplement 13 located on the Shore of Lake Robinson, Darlington and Chesterfield Counties, SC, Comment Period Ends: July 30, 2003, Contact: Richard L. Emch (301) 415–1590. Revision of FR Notice Published on 5/16/2003: CEQ Comment Period Ending on 7/20/2003 has been Corrected to 7/30/2003.

Dated: May 27, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–13551 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–7]

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 1, 2003 (68 FR 16511).

Draft EISs

ERP No. D–BLM–G80002–00 Rating EC2, New Mexico Products Pipeline (NMPP) Project, Refined Petroleum

Products Pipeline System Construction and Operation, Right-of-Way Grants, Odessa, TX to Bloomfield, NM.

Summary: EPA expressed environmental concerns with the lack of information on mitigation and reducing environmental impacts from pipeline construction, disclosure of information comparing the alternatives, discussion on increased risks of a new pipeline and relative risks of safety and explosion and spills, and details for permitting requirements.

ERP No. D–BLM–J65374–WY Rating EC2, Snake River Resource Management Plan, BLM-Administrated Public Land and Resources Allocation and Management, Snake River, Jackson Hole, Teton County, WY.

Summary: EPA expressed environmental concerns that the preferred alternative will not adequately manage land use on a watershed basis, implement restoration and improve the riparian function and hibitat diversity of the Snake River. EPA recommends considering ways to reduce mixed ownership and develop partnership strategies such as a corridor-wide management plan to restore the river to its properly functioning condition.

ERP No. DB–AFS–J65287–UT Rating EC2, Long Deer Vegetation Management Project, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT.

Summary: EPA expressed environmental concerns with potential adverse impacts to aquatic resources and contiguous terrestrial habitat from harvest activities and road closures in the project area. The DSEIS should include additional detailed information regarding adaptive management, alternatives, ecosystem characterization and fuel loading, roads and habitat fragmentation.

Final EISs

ERP No. F–AFS–K65246–AZ, Flagstaff/Lake Mary Ecosystem Analyses Area, Amendment to the Coconino National Forest Plan, Implementation, Coconino National Forest, Peaks and Mormon Lake Ranger Districts, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–F40346–MI, US 31 Petoskey Area Improvement Study, Congestion Reduction on U.S. 31 in the City of Petoskey and Townships of Resort and Bear Creek, Funding and US Army COE Section 404 Permit Issuance, Emmet County, MI.

Summary: EPA's previous environmental concerns regarding the ability of build alternatives to meet study goals, their impacts to wetlands, and the potential for land use changes have been addressed by the selection of the No Build Alternative. EPA has no remaining concerns.

ERP No. F–NPS–K65080–AZ, Sunset Crater Volcano National Monument General Management Plan, Implementation, Flagstaff Area, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65081–AZ, Wupatki National Monument General Management Plan, Implementation, Flagstaff Area, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NPS–K61121–NV, Great Basin National Park General Management Plan Amendment, Visitor Learning Center Construction on an 80-acre Parcel of Land north of the Town of Baker, White Pine County, NV.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 27, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–13552 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF THE INTERIOR

Office of Surface Mining

Fish and Wildlife Service

Draft Programmatic Environmental Impact Statement

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; Environmental Protection Agency; Office of Surface Mining and U.S. Fish and Wildlife Service, Interior; and West Virginia Department of Environmental Protection.

ACTION: Announcement of Draft Programmatic Environmental Impact Statement (DEIS) availability and notice of public hearings.

SUMMARY: The above agencies announce the availability of the DEIS on Mountaintop Mining/Valley Fills in Appalachia for public comment. The DEIS considers new or revised program guidance, policies, or regulations to minimize, to the maximum extent practicable, the adverse environmental effects of mountaintop mining/valley fill operations within the Appalachian study area in West Virginia, Kentucky, Virginia, and Tennessee.

The DEIS is being mailed to known interested parties and can be viewed on the Internet at *http://www.epa.gov/region3/mtntop/index.htm.* The DEIS can also be viewed at local offices of the above agencies and at local libraries. Copies of the DEIS can be requested by calling the Environmental Protection Agency, Region 3, toll free at 1–800–228–8711.

The public is invited to provide written comments on the DEIS during the extended 90-day comment period and oral comments during either of the 2 public hearings. The first hearing will be held at the Forum at the Hal Rogers Center, 101 Bulldog Lane, Hazard, KY 41701. The second hearing will be held at the Charleston Civic Center-Little Theater, 200 Civic Center Drive, Charleston, WV 25301. Each hearing will have two sessions: the first will be held from 2 p.m. to 5 p.m. and the second will be held the same day from 7 p.m. to 11 p.m.

DATES: The public hearing in Hazard, KY will be held on July 22, 2003, and the public hearing in Charleston, WV will be held on July 24, 2003. Written comments on the DEIS must be received by August 29, 2003.

ADDRESSES: Send written comments on the DEIS to John Forren, U.S. Environmental Protection Agency (3EA30), 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: For further information on the DEIS, contact Katherine Trott, U.S. Army Corps of Engineers, at (202) 761–4617; John Forren, U.S. Environmental Protection Agency, at (215) 814–2705; Michael Robinson, Office of Surface Mining, at (412) 937–2882; Cindy Tibbott, U.S. Fish and Wildlife Service, at (814) 234–4090; or Russell Hunter, West Virginia

Department of Environmental Protection, at (304) 759–0510.

John A. McElree,

LTC, EN, Acting Executive Director, Directorate of Civil Works.

Gregory Peck,

Deputy Director, Wetlands Division, Office of Water, Headquarters, Environmental Protection Agency.

Sarah E. Donnelly,

Acting Assistant Director, Program Support, Office of Surface Mining.

Marshall P. Jones,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–13452 Filed 5–29–03; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0186; FRL–7309–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act/Scientific Advisory Panel (FIFRA/SAP) to consider and review the characterization of atrazine cancer epidemiology data.

DATES: The meeting will be held on July 17, 2003, from 8:30 a.m. to approximately 5 p.m.

Comments. For the deadline for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA/SAP for this meeting should be provided on or before June 9, 2003.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments. Written 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.**

Nominations, Requests to present oral comments, and Special seating. To submit nominations to serve as ad hoc members of the FIFRA SAP for this meeting, or requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2003–0186 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steven Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *knott.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO 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 identification (ID) number OPP–2003–0186. 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, 1921 Jefferson Davis Hwy., 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/*.

EPA's position paper, charge/questions to FIFRA/SAP, FIFRA/SAP composition (i.e., members and consultants for this meeting), and the meeting agenda will be available as soon as possible, but no later than early July 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's 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's 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.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

Public commenters should 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 in hard copy 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 hand delivery/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. 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 to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0186. 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–2003–0186. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or 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–2003–0186.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0186. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. 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.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0186 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA/SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA/SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern daylight-savings time, July 10, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA/SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA/SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern daylight-savings time, July 10, 2003, to provide FIFRA/SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA/SAP. Persons wishing to submit written comments at

the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA/SAP for this meeting*. The FIFRA/SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA/SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA/SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or Agency or their employment by a Federal department or Agency (except EPA). Individuals nominated should have expertise in one or more of the following areas: Cancer epidemiology, epidemiology, and biostatistics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before June 9, 2003.

The criteria for selecting scientists to serve on the FIFRA/SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA/SAP nominee is considered to assist in a review by the FIFRA/SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. As such, the FIFRA/SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA, (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the nominee's employment, stocks, bonds, and where applicable sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA/SAP. Selected FIFRA/SAP members will be hired as special government employees. The Agency will review all nominations. FIFRA/SAP members participating at this meeting will be posted on the FIFRA/SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA/SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA/SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA/SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA/SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health (NIH) and the National Science Foundation (NSF).

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA/SAP on an ad hoc basis to assist in reviews conducted by the FIFRA/SAP.

B. Public Meeting

The FIFRA/SAP will meet to consider and review the characterization of atrazine cancer epidemiology data. Atrazine is an example of an herbicide where multiple epidemiologic studies have suggested an association with various cancer endpoints especially prostate cancer. Results of a cancer epidemiology study of manufacturing workers found a significant excess of prostate cancer, but there is strong evidence that some or all of this finding could be an effect of increased screening of workers.

The National Cancer Institute (NCI) and EPA are cooperating on a prospective cohort study of about 90,000 pesticide applicators and their spouses in the states of Iowa and North Carolina. Published results from this study did not find an excess of prostate cancer among commercial or private applicators, primarily in agricultural settings. However, these workers would be expected to have lower exposure to atrazine, at least in terms of duration of exposure compared to workers at the manufacturing plant.

Several epidemiologic studies have suggested an association between atrazine and other cancer endpoints. Considering the mixed results and the strengths and weaknesses of these studies, how should they contribute to the weight of evidence characterization in the atrazine risk assessment?

C. FIFRA/SAP Meeting Minutes

The FIFRA/SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA/SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 22, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–13433 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0192; FRL–7311–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review issues concerned with ensuring data quality for *in vitro* tests used as alternatives to animal studies for regulatory purposes.

DATES: The meeting will be held on July 16, 2003, from 8:30 a.m. to approximately 5 p.m., eastern daylight saving time.

Comments. For the deadline for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before June 9, 2003.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments. Written 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.**

Nominations, requests to present oral comments, and special seating. To submit nominations to serve as ad hoc members of the FIFRA SAP for this meeting, or requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2003–0192 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta Christian, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO 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 identification (ID) number OPP–2003–0192. 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, 1921 Jefferson Davis Hwy., 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/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than early July 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket 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.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

Public commenters should 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 in hard copy 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 hand

delivery/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. 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 to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0192. 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–2003–0192. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or 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–2003–0192.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0192. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. 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.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0192 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern daylight saving time, July 10, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern daylight saving time, July 10, 2003, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals

nominated should have expertise in one or more of the following areas: Toxicology, *in vitro* test methods, biostatistics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before June 9, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the Environmental Protection Agency (EPA Form 3110–485–02) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as Special Government Employees. The Agency will review all nominations. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Face-to-Face Public Meeting

The FIFRA SAP will meet to consider and review issues concerned with ensuring data quality for *in vitro* tests used as alternatives to animal studies for regulatory purposes. Many *in vitro* methods have been developed or are under development to replace animal tests. Organizations may develop *in vitro* methods using *ex vivo* tissues or biological constructs as the target tissue and fully disclose their test design and the scientific principles of the test. In other cases, *in vitro* methods may be developed by commercial sponsors for commercial marketing as Proprietary Test Methods (PTM). *In vitro* alternatives to animal testing pose unique issues regarding quality and performance. Once a new *in vitro* method is validated and accepted for regulatory use to characterize human health and environmental effects, a process is needed to provide assurance that it will continue to perform in a manner consistent with the test system as it was originally validated. Consistency of the *in vitro* assay system is needed with: Time, any change in ingredients or manufacturing process in the test system to be marketed, or variations in interpretation of a method described only generically in a test guideline. In addition, a process should be developed to allow ''Me-too'' methods to qualify for regulatory use, based on the validation originally performed for the PTM.

For this meeting, the FIFRA SAP will consider and review test guideline approaches to address performance and quality of *in vitro* methods when used as alternatives to animal studies. In addition, the panel will consider core guideline elements, and minimum performance and procedural standards for three new *in vitro* corrosivity assays.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 22, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–13434 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0160; FRL–7307–1]

Pesticide Products; Registration Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the following four pesticide products Nut GuardV/Fruit GuardV, Novozymes Biofungicide Green-Releaf™ 710-140, GB34 Concentrate Biological Fungicide, and GB34 Technical Biological Fungicide containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Regulatory Action Leader, listed in the table below:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	EPA Registration No.
Leonard Cole	(703) 305–5412; *cole.leonard@epa.gov*	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	73176–1
Susanne Cerrelli	(703) 308–8077; *cerrelli.susanne@epa.gov*	Do.	70127–2
Anne Ball	(703) 308–8717; *ball.anne@epa.gov*	Do.	7501–191 7501–192

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 identification (ID) number OPP–2003–0160. 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, 1921 Jefferson Davis Hwy., 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

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.

II. Did EPA Approve the Applications?

The Agency approved the applications after considering all required data on risks associated with the proposed uses of Indian Meal Moth Granulosis Virus; *Bacillus licheniformis* strain SB3086; *Bacillus pumilus* strain GB34, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Indian Meal Moth Granulosis Virus; *Bacillus licheniformis* strain SB3086; *Bacillus pumilus* strain GB34 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

1. EPA issued a notice, published in the **Federal Register** of August 31, 2001 (66 FR 45987) (FRL–6760–5), which announced that AgriVir LLC, 1625 K Street, NW, Suite 1000, Washington, DC 20006, had submitted an application to register the pesticide product, Nut GuardV/Fruit GuardV, as a moth larvicide (EPA File Symbol 73176–R), containing 96.4% Indian Meal Moth Granulosis Virus and larval parts on milled wheat bran carrier. This product was not previously registered.

The application was approved on December 21, 2001, as Nut GuardV/Fruit GuardV (EPA Registration Number 73176–1) for controlling Indian Meal moth larvae on dried fruit, shelled and unshelled nuts, and in cracks and crevices in processing, packing, and storage areas.

2. EPA issued a notice, published in the **Federal Register** of June 26, 2002 (67 FR 43114) (FRL–7182–9), which announced that Novozymes Biologicals,

Inc., 111 Kelser Mill Road, Salem, VA 24153, had submitted an application to register the pesticide product, Novozymes Biofungicide Green Releaf ™ 710-140, a biological fungicide (EPA File Symbol 70127–E), containing *Bacillus licheniformis* Strain SB3086 at 0.14%. This product was not previously registered.

The application was approved on February 4, 2003, as Novozymes Biofungicide Green-Releaf™ 710-140 (EPA Registration Number 70127–2) for fungicidal treatment of ornamental turf, lawns, golf courses, ornamental plants, conifers and tree seedlings in outdoor, greenhouse, and nursery sites. The active ingredients registered for this product are *Bacillus licheniformis* Strain SB3086 at 0.14% and Indole-3-butyric Acid at 0.00096%.

3. EPA issued a notice, published in the **Federal Register** of December 31, 2001 (66 FR 67520) (FRL–6813–7), which announced that Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093, had submitted applications to register the following two pesticide products GB34 Concentrate Biological Fungicide, fungicide (EPA File Symbol 7501–ROR) and GB34 Technical Biological Fungicide (EPA File Symbol 7501–ROE), containing *Bacillus pumilus* GB34 at 0.28% and 13.8%, respectively. These products were not previously registered.

The applications were approved on March 13, 2003, as GB34 Concentrate Biological Fungicide (EPA Registration Number 7501–191); for use as a treatment for soybeans for suppression of root diseases caused by *Rhizoctonia* and *Fusarium* and GB34 Technical Biological Fungicide (EPA Registration Number 7501–192) for reformulating into end-use fungicide products.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 15, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–13437 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0122; FRL–7304–6]

Fenthion; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by Bayer Environmental Science to voluntarily cancel the registrations for all of their products containing O,O-dimethyl O-(4-methylthio)-m-tolyl)phosphorothioate (fenthion). EPA intends to grant this request by issuing a cancellation order at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of this request. It is EPA's intent that the effective date of the cancellation order, as requested by Bayer, will be June 30, 2004. Upon the effective date of the cancellation order, any distribution or sale of products listed in this notice will be prohibited as of June 30, 2004, except for return of unused portions to Bayer or for proper disposal. EPA expects use of products listed in this notice will be permitted until November 30, 2004. Any such use must be in accordance with the label. Bayer has submitted, and EPA intends to approve, label amendments intended to further mitigate the risks of fenthion. Because Bayer has requested cancellation of the registrations of all of its fenthion products, Bayer is not required to satisfy the data requirements in any of the Agency's Data Call-Ins, including the Developmental Neurotoxicity Data Call-In.

DATES: Comments on the requested registration cancellations must be submitted to the address provided below and identified by docket ID number OPP–2003–0122. Comments must be received on or before July 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or by hand delivery or courier. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0122 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Susan Jennings, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (706) 355–8574; e-mail address: *jennings.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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 identification (ID) number OPP–2003–0122. 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. EPA also established two dockets containing documents in support of the fenthion IRED. They are dockets OPP–34145 and OPP–34145A. 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, 1921 Jefferson Davis Hwy., 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.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate 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 to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0122. 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–2003–0122. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or 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–2003–0122.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0122. 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?

This notice announces receipt by the Agency of a request from Bayer Environmental Science to cancel two pesticide products registered under section 3 of FIFRA. These registrations are listed by registration number in Table 1. Additionally, there are four section 24(c) registrations, which the Agency intends to address in a separate action.

A. Background Information

Fenthion is an organophosphorous insecticide used to control adult mosquitos in Florida.

In a letter dated March 31, 2003, Bayer Environmental Science requested a voluntary cancellation of all their registrations for products containing fenthion, to be effective June 30, 2004. Bayer stated that this decision was based on the fact that the market for this product is very limited, in addition to the expected costs for generating data to meet the requirements mandated by the FIFRA reregistration process.

Bayer has requested that distribution and sale of fenthion be prohibited after

June 30, 2004. The Agency intends to announce this in a cancellation order following the comment period, unless substantive comments warrant the Agency's further review of this request. Use of fenthion will be prohibited after November 30, 2004. All unopened material may be returned to Bayer Environmental Science until December 31, 2004.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 60–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registant has requested a waiver of the comment period. The Agency will therefore apply a 60–day comment period.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Company
432–1285	Baytex Liquid Concentrate Insecticide	Bayer Environmental Science
432–1290	Baytex Technical Insecticide	Bayer Environmental Science

Unless a request is withdrawn by the registrant within 60 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling all of these registrations.

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
432	Bayer Environmental Science, 95 Chestnut Ridge Road, Montvale, NJ 07645

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and must accept public comment for a specified time. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request and Considerations for Reregistration of Fenthion

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before July 29, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

Any person, including the registrant, who wishes to support the continued registration of fenthion, must fulfill all outstanding data gaps. In addition, EPA must find that fenthion is eligible for reregistration. Finally, EPA may have to consult with the U.S. Fish and Wildlife Service under the Endangered Species Act.

V. Provisions for Disposition of Existing Stocks

The Agency intends to issue a cancellation order following consideration of all comments received during the comment period, unless the comments warrant further review of this request. Any cancellation order issued in response to this request will have an expected effective date of June 30, 2004.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The Agency intends to grant the request of Bayer that there be no distribution and sale of existing stocks as of the effective date of the cancellation order, June 30, 2004, except for the return to Bayer of unused product or for proper disposal until December 31, 2004. The Agency also intends to grant Bayer's request that the use of fenthion be prohibited as of November 30, 2004. All use of fenthion must be in accordance with the terms and conditions of the product's labeling.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 29, 2003.

Lois Ann Rossi,

Director, Special Review and Reregistration Division

[FR Doc. 03–13561 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0071; FRL–7295–7]

Quinoxyfen; 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 ID number OPP–2003–0071, must be received on or before June 30, 2003.

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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–3194]; e-mail address: *brothers.shaja@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–2003–0071. 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, 1921 Jefferson Davis Hwy., 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 on 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 hand delivery/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 to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0071. 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–2003–0071. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or 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–2003–0071.

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, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0071. 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 the elements 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 support 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: May 19, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Interregional Research Project Number (IR-4), 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.

Interregional Research Project Number (IR-4)

PP 1E6302 and 2E6474

EPA has received pesticide petitions (1E6302 and 2E6474) from the Interregional Research Project Number (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of quinoxyfen 5,7-dichloro-4-quinolyl 4-fluorophenyl ether in or on the following raw agricultural commodities: Grape at 0.70 parts per million (ppm) (1E6302), hop, dried at 5 ppm (1E6302), and cherry at 0.4 ppm (2E6474). EPA has determined that the petitions contain 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 support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by the registrant, Dow AgroSciences LLC, Indianapolis, IN 46268.

A. Residue Chemistry

1. *Plant metabolism*. The nature of residues is adequately understood for the purposes of these tolerances. Based on the findings from these studies, quinoxyfen is the primary residue in all crops and therefore, the only residue of concern. Metabolites were present at low levels (<10% of total radioactive residue).

Grape vineyard, cherry orchards, and hops are not normally rotated to succeeding crops, therefore, concerns on the residues in rotational crops are minimal. Nonetheless, a confined rotational crop study was conducted with quinoxyfen which confirmed

minimal carryover of residues (> 0.003 µug/g) to succeeding crops.

2. *Analytical method.* A practical analytical method for detecting and measuring levels of quinoxyfen in or on cherries, hops, grapes and its products allows monitoring of residues at or above the tolerances set for these crops. The analytical method uses capillary gas chromatography and mass selective detection (GC-MSD) with limits of quantitation (LOQ) of 0.01 parts per million (ppm) for cherries, grapes, grape juice, raisins and 0.05 ppm for hops. An independent laboratory has validated the method using hops, which is typically the more difficult matrix to analyze.

3. *Magnitude of residues.* The magnitude of residues for grape, hops, and cherry is adequately understood.

B. Toxicological Profile

1. *Acute toxicity.* Quinoxyfen technical has low acute toxicity. The acute oral lethal dose $(LD)_{50}$ in rats was >5,000 milligrams/kilogram (mg/kg) whereas, the dermal $(LD)_{50}$ in rabbits was >2,000 mg/kg. The acute inhalation lethal concentration $(LC)_{50}$ in rats was greater than the highest attainable aerosol concentration (3.38 mg/L). Quinoxyfen produced no dermal irritation and only mild eye irritation in rabbits. A guinea pig dermal sensitization study conducted by the modified Buehler method found no sensitization, whereas a study conducted by the Magnusson and Kligman maximization test showed a positive sensitization reaction. Formulations of quinoxyfen are water based suspension concentrates that have similar low acute toxicity. These suspension concentrates are classified as non-sensitizer, based on the results from testing in guinea pigs.

2. *Genotoxicity.* Quinoxyfen was negative for genotoxicity when tested in *in vitro* and *in vivo* systems.

3. *Reproductive and developmental toxicity.* Quinoxyfen did not have any effect on reproductive parameters at dose levels that induced treatment-related effects in parental rats. Transient decreases in pup body weights were seen prior to weaning, but dietary concentrations were targeted for adults and consumption of treated diets by the pups resulted in dose levels to the pups approximately 3-fold higher than in adults. Post-weaning weights were comparable to controls. A teratogenic potential for quinoxyfen was not demonstrated in either rats or rabbits at dose levels that induced maternal toxicity.

4. *Subchronic and chronic toxicity.* Quinoxyfen caused increased liver weights and microscopic hepatocellular hypertrophy when given at sufficiently high dose levels in rats and mice for 13 weeks; no effects were observed in the subchronic dog study at the highest dose tested. Very high dietary levels were associated with slight hepatocellular necrosis. Similar increases in liver weights were seen in chronic studies. In addition, increased kidney weights, and an increase in the incidence of chronic progressive glomerulonephropathy, were seen after 24 months in female rats given high dose levels of quinoxyfen. Chronic toxicity seen in dogs included liver effects as noted above, along with regenerative anemia at high dose levels.

Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that quinoxyfen be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of studies in two species. Dow AgroSciences believes there was no evidence of carcinogenicity in an 18–month mouse feeding study and a 24–month rat feeding study at any dosage tested.

5. *Animal metabolism.* Quinoxyfen is rapidly absorbed, extensively metabolized and rapidly eliminated in the urine and feces. Studies conducted with 14_C-quinoxyfen, labeled in either the phenyl ring or the quinoline ring, indicated extensive cleavage of the diaryl ether linkage. There were no substantive differences in the metabolism and disposition of quinoxyfen between males and females, or between single or repeated exposure. Parent quinoxyfen was not found in the urine; although, it was identified in the feces. The major metabolites found in urine and/or feces included: (1) Acid-labile conjugates of the phenyl ring moiety (4-FP) and quinoline ring moiety (DCHQ); (2) lesser quantities of free 4-FP and DCHQ; and (3) isomers of fluorophenyl-ring hydroxy-quinoxyfen, both free and glucuronide and/or sulfate conjugates. Trace quantity of the 3-OH metabolite was also identified in the urine and feces of rats.

6. *Metabolite toxicology.* The nature of residue studies of quinoxyfen in plants indicated that the majority of applied radiolabeled material remained as the parent compound. Analyses from nature of residues studies in a number of crops revealed low residues of metabolites (<10% TRR) identified as: (1) A quinoline-ring hydroxylated metabolite, most likely 3-OH; (2) a cyclized deschloro photoproduct (CFBPQ); (3) 4-FP; and (4) a metabolite in which the fluorine was replaced by a hydroxyl group. Of these metabolites, 4-FP (formed by ether bridge cleavage), and DCHQ (corresponding to the other half of the molecule), as well as trace quantities of 3-OH, have been identified in rat urine and/or feces. These data suggest that most metabolites formed in plants are similarly formed in mammals and are of little toxicologic concern, based on the existing data for quinoxyfen.

7. *Neurotoxicity.* Quinoxyfen has been shown to have no neurotoxicologic potential based on acute and subchronic studies.

8. *Endocrine disruption.* There is no evidence from any studies to suggest that quinoxyfen has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Potential dietary exposure and risk assessment was estimated using DEEM (Dietary Exposure Evaluation Model, Version 7.76) with USDA food consumption data continuing survey of food intake by individuals (CSFII) Survey 1994–1998.

i. *Food*—a. Acute No acute dietary risk for quinoxyfen was evaluated since no appropriate toxicity endpoint attributable to a single dose could be identified. Therefore, an acute reference dose was not established.

b. *Chronic.* The dietary exposure assessment was performed using a conservative approach (Tier I) and the estimated theoretical maximum residue contribution (TMRC) was based on the proposed tolerances for quinoxyfen on or in grapes, hops, and cherries with the assumption that 100% of these crops were treated with quinoxyfen.

ii. *Drinking water.* Based on the rapid degradation of quinoxyfen in water and its high tendency to sorb to soils, no surface water or ground water contamination is expected. This agrees with EPA Tier 1 modeling using SciGrow and GENEEC which estimated concentration of quinoxyfen at 0.006 µg/L in ground water and 241 µg/L in surface water, respectively.

2. *Non-dietary exposure.* Quinoxyfen is not currently registered for non-crop uses. Therefore, aggregate exposure to quinoxyfen will not include non-dietary, non-occupational exposures.

D. Cumulative Effects

The potential for cumulative effects of quinoxyfen and other substances that have a common mechanism of toxicity is also considered. Quinoxyfen is a member of the quinoline class of fungicides. No information is available to determine whether quinoxyfen has a common mechanism of toxicity with other pesticides. Therefore, it is appropriate to consider only the

potential risks of quinoxyfen in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. The chronic dietary exposure was evaluated using a chronic reference dose (RfD) of 0.2 mg/kg/day based on a no observed adverse effect level (NOAEL) of 20 mg/kg/day from chronic rat, chronic dog, and rat reproduction studies and uncertainty factor of 100. No additional Food Quality Protecction Act (FQPA) uncertainty factor is needed.

For the U.S. general population, the TMRC was estimated to be 0.000192 mg/kg/day. Using the conservative exposure assumptions described in Section C. and based on the completeness and reliability of the toxicity data, the aggregate exposure to quinoxyfen utilizes 0.1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quinoxyfen residues from the proposed uses.

2. *Infants and children*. 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 data base. Based on the current toxicological data requirements, the data base for quinoxyfen relative to prenatal and postnatal effects for children is complete.

In assessing the potential for additional sensitivity of infants and children to residues of quinoxyfen, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of offspring.

The population subgroup with the highest potential exposure are children (1–6 yrs old) with TMRC of 0.00071 mg/kg/day. Using the conservative exposure assumptions previously described in Section C. the percent RfD utilized by the potential aggregate exposure to quinoxyfen residues is about 0.4% for children (1–6 yrs old), the population subgroup with highest potential exposure. Quinoxyfen had no effect on reproduction or embryo-fetal development at any dosage tested. Therefore, no additional FQPA uncertainty factor is needed. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to quinoxyfen residues from proposed uses.

The drinking water level of concern (DWLOC) for the general U.S. population and children 1–6 years old (population subgroup with the highest potential exposure) was calculated to be 6,993 µg/L and 1,993 µg/L, respectively. The DWLOCs are substantially greater than the estimated residue concentration in ground water or surface water; therefore, exposure to quinoxyfen would not result in unacceptable levels of aggregate human health risk.

F. International Tolerances

There are no codex maximum residue levels established for residues of quinoxyfen on grapes, hops, and cherries.

[FR Doc. 03–13562 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0170; FRL–7309–2]

Diazinon; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by Syngenta Crop Protection, Inc. to voluntarily cancel the registrations for all of their products containing diazinon, *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for this announcement, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. It is EPA's intent that the effective date of the cancellation order, as requested by Syngenta, will be June 30, 2003. Syngenta's April 8, 2003 cancellation request is contingent upon EPA's granting of certain existing stocks provisions, which are set forth in this Notice.

DATES: Comments on the requested registration cancellations must be submitted to the address provided below and identified by docket ID number OPP–2003–0170. Comments must be received on or before June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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 identification (ID) number OPP–2003–0170. 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. EPA also established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. 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, 1921 Jefferson Davis Hwy., 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.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests by Syngenta Crop Protection, Inc. to cancel all pesticide products containing diazinon that are registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Tables 1, 2, and 3 of this unit.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
100–977	D·z·n diazinon MG 56% WBC AG	Diazinon
100–978	D·z·n diazinon MG 22.4% WBC HG	Diazinon
100–979	D·z·n diazinon MG 87% HG	Diazinon
100–980	D·z·n diazinon MG 87% AG	Diazinon

TABLE 2.—OUTDOOR NON-AGRICULTURAL END-USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
100–456	D·z·n Lawn & Garden Insect Control	Diazinon
100–468	D·z·n Granular Lawn Insect Control	Diazinon
100–528	D·z·n 6000 Lawn & Garden Insect Control	Diazinon
100–770	D·z·n diazinon Lawn & Garden WBC	Diazinon
100–926	D·z·n diazinon Garden Insect Dust	Diazinon

TABLE 3.— AGRICULTURAL END-USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
100–460	D·z·n diazinon 50W	Diazinon
100–461	D·z·n diazinon AG500	Diazinon
100–469	D·z·n diazinon 14G	Diazinon
100–784	D·z·n diazinon AG600 WBC	Diazinon

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the U.S. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under a December 5, 2000 Memorandum of Agreement (MOA) between Syngenta Crop Protection, Inc. and EPA, Syngenta requested, under FIFRA section 6(f), that EPA cancel, effective as of June 30, 2003, the registrations of all of Syngenta's diazinon manufacturing-use products which are used in formulation for outdoor non-agricultural use. In the MOA, EPA expressed that it would not contemplate permitting sale, distribution or use of existing stocks of these outdoor non-agricultural manufacturing-use products, except for return to the registrant for purposes of relabeling for export, or disposal. In a letter dated April 8, 2003, Syngenta Crop Protection, Inc. requested a voluntary cancellation of all its remaining registrations (agricultural uses) for products containing diazinon, to be effective June 30, 2003. Syngenta's April 8 request is contingent upon EPA's granting of certain existing stocks provisions, which are set forth in Unit IV. of this Notice. EPA intends to grant Syngenta's requests by issuing a cancellation order at the close of the comment period for this announcement, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests.

The Reregistration Eligibility Decision (RED) document summarizes the findings of EPA's reregistration process for individual chemical cases, and reflects the Agency's decision on risk

assessment and risk management for uses of individual pesticides. Diazinon belongs to a group of pesticides known as organophosphates (OPs). EPA has issued an Interim Reregistration Eligibility Decision (IRED) document assessing the risks of exposure from diazinon.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. Syngenta requested a waiver of the 180–day comment period. The Agency will therefore apply a 30–day comment period.

Unless the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling all of these registrations.

Table 4 of this unit includes the name and address of record for the registrant of the products in Tables 1, 2, and 3 of this unit:

TABLE 4.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
100	Syngenta Crop Protection, Inc, P.O. Box 18300, Greensboro, NC 27419–8300

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The Agency intends to issue a cancellation order following consideration of all comments received during the comment period, unless the comments warrant further review of this request. Any cancellation order issued in response to this request will have an expected effective date of June 30, 2003.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA intends to include the following existing stocks provisions in the cancellation order issued pursuant to Syngenta's cancellation requests described in this Notice.

A. Outdoor Non-Agricultural Manufacturing-Use Products

1. *Distribution or sale.* The distribution or sale of existing stocks of any outdoor non-agricultural manufacturing-use product identified in Table 1 will not be lawful after June 30, 2003, except for the purposes of export consistent with FIFRA section 17 and proper disposal in accordance with applicable law.

2. *Use for producing other products.* The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other product labeled for outdoor non-agricultural use will not be lawful under FIFRA after June 30, 2003.

B. Outdoor Non-Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution, sale, or use of existing stocks by Syngenta of any product listed in Table 2 in Unit II. will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping such stocks for export consistent with the requirements of FIFRA section 17 or proper disposal in accordance with applicable law.

2. *Retail and other distribution or sale.* The distribution or sale of existing stocks by persons other than Syngenta will be prohibited after December 31, 2004, except for purposes of product recovery pursuant to the December 5, 2000 MOA, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

3. *Use of existing stocks.* Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

C. Agricultural Manufacturing-Use Products

1. *Distribution or sale, or use by registrant.* The distribution, sale, or use of existing stocks by Syngenta of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use will not be lawful under FIFRA after August 31, 2003, except for purposes shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal in accordance with applicable law.

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

D. Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution or sale of existing stocks by Syngenta of any product listed in Table 3 in Unit II. will not be lawful under FIFRA after August 31, 2003 (except for purposes of shipping for exports consistent with the requirements of FIFRA section 17 or proper disposal in accordance with the applicable law).

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 20, 2003.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–13436 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0108; FRL–7300–1]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide

product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0108, must be received on or before June 30, 2003.

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: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@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 identification (ID) number OPP–2003–0108. 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, 1921 Jefferson Davis Hwy., 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. 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.1. 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 hand delivery/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 to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0108. 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–2003–0108. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or 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), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0108.

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, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0108. 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. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. 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. Registration Applications

EPA received an application as follows to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 70231–E. *Applicant:* Toagosai Co., Ltd., 1-14-1 Nishi Shimbashi, Minato-ku, Tokyo 105–8419, Japan. *Product name:* ACARITOUCH. *Product type:* Miticide. *Active ingredient:* Propyleneglycol monolaurate at 70.81%. *Proposed classification/Use:* To control tetranychid mites on a variety of food crops and ornamental plants.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 19, 2003.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–13435 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0025; FRL–7311–9]

Approval of Test Marketing Exemptions for Certain New Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–03–02 and TME–03–03. The test marketing conditions are described in the TME applications and in this notice.

DATES: Approval of the TMEs is effective May 22, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: David Schutz, Chemical Control Division, Mail Code 7405M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (202) 564–9262; e-mail address: Schutz.David@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TMEs to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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 these actions under docket identification (ID) number OPPT–2003–0025. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 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 EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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.

II. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA approves TME–03–02 and TME–03–03. EPA has determined that test marketing the new chemical substances, under the conditions set out in the TME applications and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to these TMEs?

The test market time period, production volume, number of customers, and use must not exceed specifications in the applications and this notice. All other conditions and restrictions described in the applications and in this notice must also be met.

TME–03–02

Date of Receipt: April 24, 2003.

Notice of Receipt: May 20, 2003, (68 FR 27559) (FRL–7309–4).

Applicant: Forbo Adhesives, LLC.

Chemical: (Generic) Isocyanate functional polyester polyether urethane polymer.

Use: (Generic) Hot melt polyurethane adhesive.

Production Volume: CBI.

Number of Customers: CBI.

Test Marketing Period: CBI

TME–03–03

Date of Receipt: April 24, 2003.

Notice of Receipt: May 20, 2003, (68 FR 27559) (FRL–7309–4).

Applicant: Forbo Adhesives, LLC.

Chemical: (Generic) Isocyanate functional polyester polyether.

Use: (Generic) Hot melt polyurethane adhesive.

Production Volume: CBI.

Number of Customers: CBI.

Test Marketing Period: CBI

The following additional restrictions apply to these TMEs. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's Risk Assessment for these TMEs?

EPA identified no significant health or environmental concerns for the test market substances. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on these TMEs in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 22, 2003.

Linda Gerber,

Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 03–13560 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7505–9; CWA–HQ–2001–6009; EPCRA–HQ–2001–6009; CAA–HQ–2001–6009; RCRA–HQ–2001–6009]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Gerdau Ameristeel, Inc., d/b/a/ Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 1, 2003, EPA published in the **Federal Register** information concerning a proposed settlement with Gerdau Ameristeel, Inc., d/b/a Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville (''Gerdau''). (*See* 68 FR 23306). The purpose of this correction is to provide the correct docket number for providing comment on the proposed settlement. The correct docket number for submitting comments is EC–2003–013. This correction does not extend the public comment period beyond the date included in the original notice. EPA has entered into a consent agreement with Gerdau to resolve violations of the Clean Water Act (''CWA''), the Clean Air Act (''CAA''), the Resource Conservation and Recovery Act (''RCRA'') and the Emergency Planning and Community Right-to-Know Act (''EPCRA'') and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested persons to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

Gerdau failed to have an adequate Spill Prevention Control and Countermeasure (''SPCC'') plans for two facilities where they stored diesel oil in above ground tanks at its Perth Amboy and Sayerville, New Jersey facilities. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. Gerdau failed to meet all the requirements of the facility's storm water permit, specifically by performing unauthorized discharges, and a failure to perform training required under the Storm Water Pollution Prevention Plan (SWPPP) provisions of the General Permit at its Sayerville, New Jersey facility. EPA, as authorized by CWA section 309(g), 33 U.S.C. 1319, has assessed a civil penalty for these violations. Gerdau failed to follow the New Source Performance Standards found at 40 CFR part 60 and CAA section 111, 42 U.S.C. 7411 at its Perth Amboy, New Jersey facility. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. At the Sayerville, New Jersey facility, Gerdau failed to submit an Emergency and Hazardous Chemical Inventory form to the Local Emergency Planning Commission, the State Emergency Response Commission, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Gerdau failed to properly manage and characterize certain hazardous wastes, and failed to include certain notifications on its manifests, in accordance with RCRA and its implementing regulations, specifically 40 CFR parts 262 and 268 at its Perth Amboy, New Jersey facility and failed to amend its contingency plan and to conduct annual hazardous waste training in accordance with RCRA and its implementing regulations, specifically, 40 CFR part 265, and to characterize hazardous waste, specifically 40 CFR part 262, at its Sayerville, New Jersey facility.

DATES: Comments are due on or before June 30, 2003.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2003–013, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue, NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–020 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Sanda Howland, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–5022; fax: (202) 564–0010; e-mail: *howland.sanda@epa.gov.*

SUPPLEMENTARY INFORMATION: Electronic Copies: Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

I. Background

Gerdau is a steel minimill, incorporated in the State of Florida, with its headquarters office located at 5100 West Lemon Street, Suite 312, Tampa, Florida. Gerdau has facilities located at 225 Elm Street, P.O. Box 309, Perth Amboy, New Jersey 08862, and North Crossman Road, Sayreville, New Jersey 08871. Gerdau disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that it failed to have all of the necessary elements of an SPCC plan for the Perth Amboy, New Jersey facility, in violation of the CWA section 311(b)(3) and 40 CFR part 112. Gerdau disclosed that for its Perth Amboy, New Jersey facility, that it also had failed to perform monitoring and maintain records in accordance with CAA section 111 and 40 CFR part 60. Gerdau disclosed that its Perth Amboy, New Jersey facility also failed to properly manage and manifest certain hazardous waste in violation of RCRA section 3004 and 3005 and 40 CFR parts 265 and 268. Also, it failed to properly characterize certain solid wastes in accordance with RCRA section 3002 and 40 CFR part 262.

Gerdau also disclosed that at its Sayreville, New Jersey facility it discharged contact water without a permit in accordance with CWA sections 301 and 402 and 40 CFR parts 420 and 433, and failed to have documentation of training in its SPCC plan as required by CWA section 311 and 40 CFR part 112, and in its SWPPP, as required by CWA sections 301 and 402. In addition, Gerdau failed to properly characterize solid waste, in accordance with RCRA section 3002 and 40 CFR part 262, and had deficiencies in the facility's contingency plan in violation of RCRA section 3005 and 40 CFR part 265. Finally, Gerdau's Sayreville, New Jersey failed to identify all chemicals at the facility that exceeded threshold levels for reporting on the facility's Tier II reports. Those chemicals not identified include calcium carbide, calcium silicon,

calcium hydroxide (lime), carbon, chromium compounds, diethylene glycol, dolime, dolomite, ethylene glycol, epoxy powder, ferroboron, ferrosilicon, ferrovanadium, graphite, O2 cryogenic liquid, silicon manganese, synthetic lubricating fluid, biocides in violation of EPCRA section 312 , 42 U.S.C. 11022, and 40 CFR part 370.

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which Gerdau self-disclosed violations of CWA section 311: 225 Elm Street, P.O. Box 309, Perth Amboy, New Jersey 08862 and North Crossman Road, Sayreville, New Jersey 08871. Gerdau also disclosed a violation of CWA sections 301 and 402 at the Sayreville, New Jersey.

In addition, Gerdau self-disclosed violations of EPCRA section 312 at its facility located in the State of New Jersey.

EPA determined that Gerdau met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($439,622) and proposes a settlement penalty amount of forty-three thousand, five hundred and sixty-five dollars ($43, 565). This is the amount of the economic benefit gained by Gerdau, attributable to their delayed compliance with the CWA, RCRA, CAA and EPCRA regulations. Gerdau has agreed to pay this amount. EPA and Gerdau negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on March 11, 2003 (*In Re: Gerdau Ameristeel, Inc., d/b/a Gerdau Ameristeel, Perth Amboy and Gerdau Ameristeel, Sayerville,* Docket Nos. RCRA–HQ–2001–6009, CWA–HQ–2001–6009, CAA–HQ–2001–6009, EPCRA–HQ–2001–6009). This consent agreement is subject to public notice and comment under CWA sections 309, 33 U.S.C. 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311 (j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CWA sections 301 and 402, persons are not allowed to discharge pollutants to waters of the United States without first obtaining a permit. Any person who fails to comply with sections 301 and 402, or who fails or refuses to comply with any regulations or permits that have been issued under CWA sections 301 and 402, may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 301 and 402 are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated RCRA or its implementing regulations. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is June 30, 2003. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: May 23, 2003.

Robert A. Kaplan,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–13567 Filed 5–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0580.

Title: Section 76.1710, Operator Interests in Video Programming.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,500.

Estimated Time per Response: 15 hours.

Frequency of Response: Recordkeeping.

Total Annual Burden: 22,500 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.1710 (formerly 76.504) requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities, and the Commission on reasonable notice and during regular business hours. The Commission and local franchising authorities will review the information to monitor compliance with channel occupancy limits in respective local franchise areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13464 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

May 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 30, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by April 14, 2003.*

OMB Control Number: 3060–1038.

Type of Review: New collection.

Title: Digital Television Transition Information Questionnaires.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 844.

Estimated Time per Response: 4 to 24 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 4,823 hours.

Total Annual Cost: $251,400.

Needs and Uses: In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. At the end of the transition, broadcasters' analog channels will be returned to the government. Congress set a target date of December 31, 2006 for the end of the transition, although that date can be extended if 85% of viewers in a particular market do not have access to the digital signals. In addition, at the end of the transition the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content—consumers must perceive something significantly different than what they have in analog. Second, distribution—the content must be delivered to consumers in a simple and convenient way. Third, equipment—equipment must be capable, affordable and consumer-friendly. And fourth, education—consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13465 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this (these) information collection(s) should submit comments by July 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington,

DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0105.

Title: License Qualification Report.

Form No.: FCC Form 430.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 1,000 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure, alien ownership, and character of applicant or licensee. FCC Form 430 is also filed by applicants soliciting authority for assignment or transfer of control. The information will be used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act of 1934, as amended. The Commission is requesting an extension of the current OMB approval.

OMB Control No.: 3060–0613.

Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Transport Phase II (Third Report and Order).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 64.

Estimated Time Per Response: 5–37 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 832 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Tier 1 Local Exchange Carriers (LECs) (except NECA members) are required to make tariff filings to provide certain signaling information to interested parties so that those parties can provide tandem switching services. Tandem switching providers are required to provide certain billing information to those Tier 1 local exchange carriers. The tariffs and cost support information accompanying them are used by the FCC staff to ensure that the tariff rates that are paid for signaling information are just, reasonable, and nondiscriminatory, as required by Sections 201 and 202 of the Communications Act of 1934, as amended.

OMB Control No.: 3060–0725.

Title: Annual Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies (BOCs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 7.

Estimated Time Per Response: 50 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 350 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Bell Operating Companies (BOCs) must submit non-discrimination reports on an annual basis. Without provision of these reports, the Commission would be unable to ascertain whether the BOCs were discriminating in favor of their own payphones. The report allows the Commission to determine how the BOCs will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

OMB Control No.: 3060–0726.

Title: Quarterly Report of Interexchange Carriers Listing the Number of Dial-Around Calls for Which Compensation is Being Paid to Payphone Owners.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 275 respondents; 1,100 responses.

Estimated Time Per Response: 2 hours (.50 hours per response).

Frequency of Response: Quarterly reporting requirement and third party disclosure requirement.

Total Annual Burden: 550 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Interexchange carriers responsible for paying per-call compensation to payphone providers must submit a quarterly list of dial-around calls to those payphone providers. The payphone providers need the list to calculate the compensation to be paid by the interexchange carriers. All the requirements would be used to ensure that interexchange carriers comply with their obligations under the Telecommunications Act of 1996.

OMB Control No.: 3060–0817.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 5 respondents; 10 responses.

Estimated Time Per Response: 50 hours.

Frequency of Response: On occasion and semi-annual reporting requirements, third party disclosure requirement.

Total Annual Burden: 270 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: BOCs are required to post their Comparably Efficient Interconnection (CEI) plans and amendments on their publicly accessible Internet sites. The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services.

OMB Control No.: 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other-for profit.

Number of Respondents: 5 respondents; 20 responses.

Estimated Time Per Response: 8 hours (4 petitions, totally 20 petitions annually).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 160 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: BOCs that petition for LATA boundary modifications to

encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with specified criteria. The criteria set forth in Commission rules will serve to ease the petition process on BOCs by providing guidelines that will serve to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition review process by ensuring that petitioners will provide all the information the Commission needs to properly review the requests.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13466 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0767.

Title: Auction Forms and License Transfer Disclosures '' Supplement for the Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order in WT Docket No. 97–82.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individual or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 22,000.

Estimated Time Per Response: .75–5.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 770,250 hours.

Total Annual Cost: $47,452,000.

Needs and Uses: The Commission sought and received emergency OMB approval for the above information collection requirements on 05/19/03. The Commission is now seeking an extension of the currently approved collection to obtain OMB approval for the full three years. Commission rules require small business applicants to submit ownership information and gross revenue calculations, and all applicants must submit joint bidding agreements. In the case of default, the FCC retains the discretion to re-auction such licenses. Finally, licensees transferring licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Certification is required for entities dropping out of auction to secure certain ownership interests in participants.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13467 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2608]

Petitions for Reconsideration of Action in Rulemaking Proceedings

May 20, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by June 16, 2003. 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: Amendment of the Commission's Rules Concerning Truthful Statements to the Commission (GC Docket No. 02–37).

Amendment of the Commission's Rules Regulations to Adopt Protection of the Due Process Rights and Other Protections of Title III Licenses in Connection With the Exercise by the Commission and its Staff of the Commission's Enforcement Powers and Certain Licensing and Regulatory Functions.

Number of Petitions Filed: 1.

Subject: In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171).

Telecommunications Services for Individuals With Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92–237).

Number Resource Optimization (CC Docket No. 99–200).

Telephone Number Portability (CC Docket No. 95–116).

Truth-in-Billing Format (CC Docket No. 98–170).

Number of Petitions Filed: 1.

Subject: In the Matter of the Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CC Docket No. 98–67).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–13469 Filed 5–29–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, June 3, 2003, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re:

Notice and Request for Public Comment Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA'').

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: May 27, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–13663 Filed 5–28–03; 8:45 am]

BILLING CODE 6714–01–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 June 12, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Tim Lapke, Logan, Iowa; John Lapke, Logan, Iowa; and Chris Hartwig, Missouri Valley, Iowa; to acquire voting shares of Logan Bancorporation, Inc., Logan, Iowa, and thereby indirectly acquire voting shares of The First National Bank of Logan, Logan, Iowa.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. John Finch Woodhead, Delano, Minnesota, as trustee of the Cobb Limited Partnership, St. Croix Falls, Wisconsin; to acquire voting shares of Financial Services of St. Croix Falls, Inc., St. Croix Falls, Wisconsin, and thereby indirectly acquire voting shares of Eagle Valley Bank, National Association, St. Croix Falls, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Marvin Sparks, Panhandle, Texas; to acquire voting shares of Groom Bancshares, Inc., Groom, Texas, and thereby indirectly acquire voting shares of State National Bank, Groom, Texas.

Board of Governors of the Federal Reserve System, May 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13506 Filed 5–29–03; 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 June 12, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Northview Financial Corporation, Northfield, Illinois; to acquire Northview Mortgage, L.L.C., Northfield, Illinois, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–13507 Filed 5–29–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1152]

Federal Reserve Bank Services; Imputed Investment Income on Clearing Balances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice with request for comments.

SUMMARY: The Board requests comment on a proposal to modify the method for imputing priced-service income from clearing balance investments. The Federal Reserve Banks impute this income when setting fees and measuring actual cost recovery each year.

Specifically, the Board requests comment on a proposal to impute the income from its clearing balance investments on the basis of a broader portfolio of investment instruments than used today, selected from instruments available to banks and subject to a portfolio management framework. Selection of the portfolio mix would be subject to a risk-management framework that includes criteria consistent with those used by bank holding companies and regulators in evaluating investment risk. The Board also requests comment on two different implementation methods for imputing this investment income.

This proposal focuses on the imputed investment of clearing balances; it would not change the terms or conditions under which depository institutions hold clearing balances. If adopted, the changes would be effective for the 2004 fees for Federal Reserve priced services.

DATES: Comments must be submitted on or before July 14, 2003.

ADDRESSES: Comments, which should refer to Docket No. R–1152, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. weekdays, pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Gregory L. Evans, Manager (202/452–3945) or Brenda L. Richards, Sr. Financial Analyst (202/452–2753); Division of Reserve Bank Operations and Payment Systems. Telecommunications Device for the Deaf (TDD) users may contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Monetary Control Act (MCA) requires Federal Reserve Banks to establish fees for ''priced services'' provided to depository institutions at a level necessary to recover, over the long run, all direct and indirect costs actually incurred and imputed costs.[1,2] In addition, the Reserve Banks impute a priced services return on capital (profit).[3] The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF). Just as the PSAF is used to impute costs that would have been incurred and profits that would have been earned had services been provided by a private business firm rather than the central bank, the Reserve Banks impute income that would have been earned on the investment of clearing balances customers hold with the Reserve Banks had those balances been held by a private business firm. This imputed income, less the costs associated with the clearing balances, is referred to as the net income on clearing balances (NICB).

Since 2002, the imputed elements of the Reserve Bank pricing process reflected in the PSAF and NICB calculations have become more integrated. For example, by using a small portion of the investable clearing balances as a financing source for the assets used in the delivery of priced services, the financing costs embedded in the PSAF are reduced. This proposal extends the review of the key features of the methods for computing the imputed elements.

Calculating the PSAF includes projecting the level of priced-services assets, determining the financing mix used to fund the assets, and the rates used to impute financing costs.[4] Much of the data for the PSAF are developed from the ''bank holding company (BHC) model,'' a model that contains consolidated financial data for the nation's fifty largest (based on deposit balances) BHCs.[5] As part of this process, a core amount of clearing balances is considered stable and available to finance long-term assets.[6]

The method for deriving the NICB is reviewed periodically to ensure that it is still appropriate in light of changes that may have occurred in Reserve Bank priced services activities, accounting standards, finance theory, regulatory practices, and banking activity.[7] The current methodology for imputing investment income assumes that the Reserve Banks invest all clearing balances, net of imputed reserve requirements and the amount necessary to finance long-term assets, in three-month Treasury bills. The imputed income on the Treasury-bill investments net of the actual earnings credits granted to clearing balance holders based on the federal funds rate is considered income or expense for priced-services activities. The net income associated with clearing balances is one component in pricing decisions and in evaluating cost recovery.

A. Clearing Balances

Depository institutions may hold both reserve and clearing balances with the Federal Reserve Banks.[8] Reserve balances are held pursuant to a regulatory requirement and are not a result of an institution's use of priced

[1] Priced services include primarily check, automated clearinghouse, Fedwire funds transfer, and Fedwire securities services.

[2] Imputed costs include financing costs, taxes, and certain other expenses that would be incurred if a private business firm provided the services.

[3] The return on capital is imputed using the average of the results of three economic models, the comparable accounting earnings model, the discounted cash-flow model, and the capital asset pricing model.

[4] Equity is imputed based on the Federal Deposit Insurance Corporation's (FDIC) definition of a ''well-capitalized'' institution for insurance premium purposes.

[5] The top fifty BHCs are used as the data peer group as they are considered to be the private-sector providers of services most analogous to the Reserve Bank priced-services activities.

[6] The Board classified clearing balances of $4 billion as core beginning with the 2002 price-setting. Core balances have not fallen below $4 billion since 1992. (66 FR 52617, October 16, 2001)

[7] In 1994, the Board requested comment on a proposal to modify the methodology for imputing clearing balance income. The Board proposed replacing the three-month Treasury-bill imputed investment with a longer-term Treasury investment based on the earning asset maturity structure of the largest BHCs. As a result of issues related to interest rate risk raised in the comments, the Board did not adopt the proposal. The proposal would have created an asset and liability mismatch that created interest rate risk exposure inappropriate for Federal Reserve priced services. In addition, Federal Reserve priced services would not have assumed the interest rate risk associated with longer-maturity investments because the imputed return would have been adjusted monthly to reflect current rates. (59 FR 42832, August 19, 1994)

[8] ''Clearing balances,'' unless otherwise indicated, refers to total clearing balances including contracted balances and balances in excess of the contracted amount, held by depository institutions with the Federal Reserve Banks.

services.[9] Clearing balances were introduced when Reserve Banks implemented the MCA of 1980, which required the Federal Reserve to price its payment services and broadened direct access to those services to include institutions that previously did not have a Federal Reserve balance requirement. Clearing balances are held to settle transactions arising from use of Federal Reserve priced services for institutions that either do not hold reserve balances or find their reserve balances inadequate to settle their transactions. At year-end 2002, depository institutions held more than $10 billion in clearing balances at Reserve Banks.

Clearing balances held at Reserve Banks are similar to compensating balances held by respondent banks at correspondent banks. Respondent banks hold compensating balances to support the settlement of payments, as well as for other purposes. Reserve Banks and some correspondent banks establish a contractual balance level that the account holder must maintain on average over a specified period. Both Reserve Banks and correspondent banks provide compensation in the form of earnings credits to the holders of clearing or compensating balances. Earnings credits provided by the Reserve Banks are based on the federal funds rate and the contracted level of clearing balances. Reserve Bank earnings credits are not paid on any clearing balances held in excess of the contracted amount, they can only be used to pay fees for priced services, and they must be used within one year or they are forfeited. Correspondent banks use a similar approach to calculate earnings credits as compensation for respondent balances. Correspondent bank earnings credits are determined based on a variety of rates, including Treasury bill, federal funds, and others. Recognizing that Reserve Banks may compensate for balances at a different rate than correspondent banks, the Board requests comment on whether the Board should consider modifications to the Reserve Banks' earnings credit rate in the future, and, if so, what factors should be considered in the evaluation.

B. Imputed Investment of Clearing Balances

The Reserve Banks impute income on the clearing balance investments rather than using the actual results from monetary policy investment activities.[10] The imputation of clearing balance income is analogous to assuming that the priced-services enterprise, which is essentially a ''monoline'' bank offering only payment services, also includes a treasury function.

Income is currently imputed based on the assumption that all available clearing balances are invested in three-month Treasury bills.[11] The Board chose three-month Treasury bills as the imputed investment vehicle because, at that time, the yield was considered to approximate the return that would be realized had clearing balance funds been held and invested by a private business firm. In addition to providing a short-term earnings rate consistent with creating a matched asset and liability structure with the short-term liabilities, the ninety-day Treasury-bill yield data are easily verified by outside observers with publicly available data.

II. Discussion

Table 1 presents the spread of the three-month Treasury bill rate compared to the federal funds rate for the past twenty years. As the table shows, the current practice of imputing clearing balance investments in three month Treasury-bills while paying earnings credits at the federal funds rate has resulted in an average negative interest rate spread of 27 basis points over the past twenty years with an average standard deviation over the same period of 28 basis points.[12] The spread of the earnings rate imputed on clearing balances versus the rate for the cost of earnings credits has ranged from 8 basis points to −88 basis points over that period.[13] As a result of the average negative spread, most of the net income on clearing balances recognized during these years was the result of imputed earnings on excess balances held, which have no associated cost.

TABLE 1.—SPREAD FROM FEDERAL FUNDS

Year	T-bills (current)
1983	−0.23
1984	−0.27
1985	−0.27
1986	−0.50
1987	−0.72
1988	−0.88
1989	−0.79
1990	−0.29
1991	0.08
1992	0.08
1993	0.05
1994	−0.05
1995	−0.15
1996	−0.13
1997	−0.28
1998	−0.38
1999	−0.26
2000	−0.30
2001	−0.06
2002	0.01
Average	−0.27
Standard deviation	0.28

Although basic finance theory suggests a direct relationship between risk and earnings where earnings increase, on average, with the amount of risk incurred, a minor change to the current imputed investments could significantly increase earnings and decrease volatility. For example, investing in a simple portfolio of overnight loans to financial institutions (federal funds) would simultaneously eliminate the interest rate spread and reduce the volatility, as expressed by the standard deviation, to zero.[14] The results of an investment in federal funds demonstrate that the current investment assumption imputes less income than could be easily achieved with a low-risk alternative. Consequently, the Board believes that the current method may impute an inappropriately low NICB to priced services. The Board notes that financial institutions, such as correspondent banks and bank holding companies (BHCs), invest in a much wider array of instruments than that imputed by the Federal Reserve, including loans, Treasury securities with longer maturities, government agency securities, federal funds, commercial bonds, commercial paper, money market mutual funds, asset-backed securities, gold, foreign

[9] Regulation D, 12 CFR part 204.

[10] Decisions about monetary policy investment transactions are not motivated by profit objectives; therefore, the actual investment results are not applicable to priced-service activities.

[11] Clearing balances needed to meet an imputed reserve requirement (10 percent of clearing balances) and to ''fund'' assets used in the production of priced services ($504 million in 2003) are not available for investment.

[12] The standard deviation measures the variance around the average and indicates the level of volatility of the rates. Two-thirds of the time the actual yield will fall in the range of the average plus or minus one standard deviation. Ninety-five percent of the time the actual yield is expected to fall in the range of the average plus or minus two standard deviations.

[13] Although not represented here because of simplifying assumptions, some of the volatility in actual NICB is a result of changes in rates and changes in contracted and excess clearing balance levels.

[14] While reducing interest rate risk, a change in investment from Treasury bills to federal funds would increase credit risk. As a practical matter, however, banks have not incurred losses due to default in federal funds transactions.

currencies, repurchase agreements, and derivatives.

The Board requests comment on a proposal to impute the income on clearing balances from a broader portfolio of acceptable investment instruments, allocated within the constraints imposed by criteria used by BHC and regulators to evaluate investment risk. The Board also requests comment on two different implementation methods for imputing investments and the related income.

A. Investment Instruments

As noted in the Background section, the top fifty BHCs (based on deposits) were selected as the closest private-sector peer group for Reserve Bank priced services. Because the BHCs are a proxy for providers of priced-services activities, options for Reserve Bank priced services clearing balance investments should be comparable to those available to bank holding companies. In principle, all of the investment instruments available to bank holding companies could be appropriate clearing balance investments. The Board requests comment on whether investment options for Federal Reserve priced services should include all investment instruments permitted by regulators for bank holding companies.

In practice, the Federal Reserve proposes to limit its imputed investments to federal funds; investments suitable for a buy-and-hold strategy, such as Treasury securities, government agency securities, commercial paper, and municipal and corporate bonds; and money market and mutual funds.[15] For investments with a fixed term, this strategy eliminates capital gains and losses from the investment returns and simplifies the recognition and reporting of imputed investment income. Realized gains and losses on imputed mutual fund investments would be incorporated in the total return and recorded as net earnings. The Board requests comment on whether this investment strategy is appropriate.

B. Risk-Management Framework

To ensure that the imputed investments are indeed comparable to the investments of a similar private-sector entity, the Board believes that a risk-management framework should be established to limit the imputed investments to prudent levels in accordance with sound business practice and regulatory constraints. The exposure to any one type of risk, measured in terms of earnings or equity at risk, would be limited. The Reserve Banks currently use two risk measures in calculating the PSAF that manage liquidity and interest rate risk. The Board requests comment on two additional measures that would be part of the risk-management framework for the imputed investment of clearing balances, one to manage the longer-term effects of interest rate risk and another to manage credit risk. In addition, the Board requests comment on any other risk-management criteria that should be considered.

1. Liquidity Risk

While clearing balances are contractually short term in nature, a portion of clearing balances can be considered as core deposits that are expected to remain stable over time. When it made changes to the PSAF method, the Board determined that core clearing balances, which it initially established at $4 billion, should be available to finance long-term assets used in the delivery of priced services, rather than invested only in short-term assets. (66 FR 52617, October 16, 2001) Limiting the use of clearing balances to finance long-term assets to only that portion that is deemed core clearing balances effectively manages liquidity risk. The Board proposes that the portion of core clearing balances not used to finance priced services assets be available for imputed investment in longer-term instruments. The Board requests comment on whether using core clearing balances for imputed longer-term investments is appropriate.

2. Interest Rate Risk

One aspect of interest rate risk arises when the cost of funds and the investment yield on those funds change at different intervals. Financing longer-term assets with short-term liabilities at rates that do not change concurrently could create unacceptable earnings volatility. The Board adopted a method to address interest rate risk as part of the recent change in the PSAF methodology. This method addresses the risk to earnings in a changing rate environment by requiring that longer-term investment of clearing balances be managed so that a 200-basis-point change in the rates for the yield on all relevant priced services assets—currently the three-month Treasury bill rate—and the cost of all relevant priced service liabilities—the federal funds rate—would not affect the overall priced services recovery rate by more than 200 basis points. The Board intends to maintain this risk tolerance as a prudent constraint on the imputed investments.

The Board proposes to adopt a second measure of interest rate risk, known as economic value of equity (EVE), for use in conjunction with the earnings at risk measure. The EVE measure, which is used by BHCs and regulators, compares the present value of interest-bearing assets and liabilities in the current rate environment with the prospective present value given a change in interest rates; the comparison shows the change in present values as a proportion of equity. EVE is used as a complement to the interest rate sensitivity analysis already adopted to evaluate the effects of long-term mismatches between assets and liabilities on the value of an entity; the interest rate sensitivity analysis captures the risk to near-term earnings. Large BHCs typically manage the EVE measure within a risk-tolerance range of 5 to 10 percent.[16] The Board proposes to adopt a risk tolerance of a change of 8 percent of equity for a 200-basis-point-rate change. The Board requests comment on whether these two measures of interest rate risk, earnings at risk and equity at risk, are together sufficient measures for monitoring and controlling interest rate risk. The Board also requests comment on whether a constraint on the EVE measure limiting the effect of a 200 basis point rate change to a change of eight percent of equity is an appropriate risk tolerance level.

3. Credit Risk

Credit risk results from the possibility that the issuer of a bond or other borrower cannot repay its obligations as promised. Criteria for managing credit risk are necessary when investment instruments other than Treasury securities are used. The overall level of credit risk compared with the level of equity is measured by the ratio of risk-adjusted assets to capital. The FDIC uses two risk-based capital measures as criteria in defining a ''well capitalized'' institution for insurance premium purposes. One requires a risk-based capital ratio of 10 percent or more for total capital and the other requires a risk-based ratio of 6 percent for tier one capital.[17] Only tangible equity capital (tier one capital) is imputed to Reserve Bank priced services; therefore, the two measures are the same for priced services. Because the current investment

[15] Mutual fund investments would be selected from those that are publicly available and widely held. The specific funds used for imputing income would be disclosed during the price setting process so that performance could be tracked and replicated.

[16] More information on measurement of interest rate risk can be found at *http://www.occ.treas.gov/handbook/irr.pdf.*

[17] *http://www.fdic.gov.*

in three-month Treasury bills carries a risk weight of zero, the balance sheet underlying the 2003 PSAF shows that the priced services risk-based capital ratio is nearly 33 percent for both measures.[18] A change in investment strategy that includes investments with greater risk requires establishing a minimum risk-based total capital ratio within which to make investment decisions. As a result, the Board proposes to establish a minimum risk-adjusted total capital ratio that maintains the ratio of total capital to risk-adjusted assets at a level equal to or greater than that maintained by the fifty largest BHCs. Between 1997 and 2002 the average risk-adjusted total capital ratio for these institutions has remained near 12 percent. Because only tangible equity is imputed to priced services, the target ratio for the priced-services' risk-adjusted assets to tier one capital would be 12 percent, well above the average ratio of eight percent maintained by the entities in the BHC model. The Board requests comment on whether this target ratio adequately limits imputed investment credit risk. The Board also requests comment on whether the target ratio should be 10 percent, the minimum required by the FDIC for a well capitalized institution.

C. Implementation Methods

The Board requests comment on alternative methods to impute clearing balance income based on the proposed conceptual framework. The first method involves constructing a specific portfolio of hypothetical investments, tracking its yield, and ascribing the income to the priced-services activities. The second method imputes an investment yield expressed as a constant spread over the cost of clearing balances, without specifying an underlying portfolio.

1. Constructing a Hypothetical Portfolio

To construct a hypothetical portfolio, the Reserve Banks would select from the investment options described above that are available to correspondent banks.

Selecting the investments and the proportions of the clearing balances assigned to each investment requires an allocation method that avoids any projections of future economic conditions or interest rate environments to address concerns that such forecasts would be viewed as a market signal of future monetary policy actions. The Board proposes an allocation method that optimizes the portfolio yield within the current and proposed risk management framework criteria. This allocation would be based on the historical performance of the available investment instruments and applied to the upcoming year.

To avoid the administrative complexities of incorporating realized capital gains and losses on an imaginary portfolio in the imputed investment results, any investment with a fixed term, such as corporate bonds, would be held to maturity.[19] In addition, the Board proposes that adjustments to the portfolio allocation maintain the appropriate investment balance to optimize return; however, the amount invested in any one instrument could only decrease by the amount of the investment maturing that period, or increase by the amount of additional balances available for investment.[20]

Hypothetical Portfolio Example. The data in table 2 illustrate the results of two hypothetical investment portfolios, both of which meet the proposed risk-management framework but have different return and volatility profiles.[21] In both cases, the 1993 portfolios were selected from BHC-allowable investments to maximize return using actual yield data from 1983 through 1992. The portfolios were rebalanced each subsequent year to optimize the return based on the yield data from the previous ten years.[22] That is, for 2002 the portfolio yield reflects the actual 2002 yields of assets chosen based on each investment's performance from 1992 through 2001. Many variations on the frequency of portfolio adjustment and the length of the period from which to base yield data used in selecting the portfolio are possible and finance theory does not provide clear guidance on the optimal approach. The rolling ten-year portfolios performed as well as or better than other alternatives examined. For simplicity and comparability, all variables, other than the portfolio mix, yield, and federal funds rates, are held constant in the models for all years.[23]

TABLE 2.—10 YEAR YIELD (1993–2002)

	A	B
Average spread over federal funds	54	35
Standard deviation	98	29
Average NICB (millions)	$65.0	$48.3
NICB standard deviation (millions)	$87.9	$22.2

Example A shows the results of selecting an appropriate portfolio within the risk parameters using ten-year historical yield data. The investments in portfolio A were chosen to optimize the return without placing any constraints on volatility. The imputed return on the portfolio yields a spread over federal funds of 54 basis points. The composition of portfolio A varies over the ten year period, based on the optimum investment mix using the previous ten years' yield data. Over this time, it maintains a fairly consistent asset mix composed of primarily federal funds, Government National Mortgage Association (GNMA) mutual funds, money market mutual funds, and commercial paper. Hypothetical portfolio A, however, has a standard deviation of 98 basis points. The standard deviation for hypothetical portfolio A demonstrates greater volatility than the Reserve Banks experience with the current three-month Treasury-bill investment, which has a standard deviation of 28 basis points. Because the standard deviation for portfolio A, driven by changes in the yield, equates to approximately $88 million in NICB, variability in the NICB could range from net income of approximately $153 million to a net cost of approximately $23 million in two-thirds of the years in which the selected portfolio is held.

Example B shows the results of selecting an appropriate portfolio based on the same criteria used for portfolio A but constraining the volatility in the model to approximately what is currently experienced with Treasury bill investments. The imputed return is an average yield spread over federal funds of 35 basis points, and has approximately the same volatility as currently experienced with three-month Treasury-bill investments. Over the ten-year period, the portfolio consists primarily of federal funds, commercial paper, money market mutual funds, and

[18] 67 FR 67834, November 7, 2002.

[19] This results in a ladder approach to determining the average yield. For an investment in five-year corporate bonds, for example, the average yield would incorporate the yield from bonds purchased in increments over the preceding five years.

[20] To facilitate public verification of imputed portfolio income, the Board would publish the portfolio components and imputed investment income on its public website.

[21] For Tables 2 and 3, the following simplifying assumptions apply: (1) All clearing balance amounts are held constant throughout the analysis period, (2) total clearing balances are $10.5 billion, (3) investable balances are $9 billion, and (4) balances eligible for earnings credits are $8.6 billion.

[22] A ten-year period was selected for illustration purposes because the data are available and the period includes a variety of interest rate environments.

[23] For these reasons, the model results vary from the actual results experienced by Federal Reserve priced services.

small investments in twenty-year AAA bonds, GNMA mutual funds, and short-term corporate bond mutual funds. Because the standard deviation for portfolio B, driven by changes in the yield, equates to approximately $22 million in NICB, variability in the NICB could range from $70 million to $26 million in two-thirds of the years in which the selected portfolio is held.

The Board recognizes that a portfolio could be constructed that would have less volatility than hypothetical portfolio B and that such a portfolio would be expected to have a lower yield than hypothetical portfolio B. Priced services management finds the NICB volatility that has been associated with the current three-month Treasury-bill investment strategy acceptable, however, and would not choose a portfolio with lower volatility if it generated a lower yield. On the other hand, given the multi-year cost recovery horizon, priced services management might choose a portfolio with greater volatility than hypothetical portfolio B if it generated sufficiently greater yield.

The Board requests comment on the proposed method for selecting and adjusting a hypothetical portfolio. In particular, the Board requests comment on whether private sector providers face additional market-driven volatility constraints that should be considered when allocating among imputed assets.

2. Imputing a Constant Spread

During the development of this proposal, the Federal Reserve met with a group of representatives from banks, corporate credit unions, and their trade associations to obtain information about institution investment practices.[24] These representatives commented that construction of a risk-management framework and hypothetical portfolio appears unduly complex for imputing income from hypothetical investments and suggested that a constant basis point calculation could be simpler and provide similar results. Because the cost of clearing balances is based on the federal funds rate, they suggested that the NICB calculation impute investment income based on a clearing balance investment yield expressed as a constant spread over the federal funds rate. The representatives commented that this approach would be easier to understand, administer, and monitor.

Using a constant spread over the federal funds rate to impute the income from investing clearing balances would, by definition, not reflect the actual variability between the investment yield and the cost of funds that would occur with the hypothetical portfolio. As demonstrated by the variation in the average rate spread and volatility between portfolios A and B, both of which met the risk management constraints, constant spreads of varying amounts could be defended as appropriate. Further, finance theory suggests that a discount to the constant rate might be required to essentially buy the consistency that is produced by a constant spread method.

The Board proposes that if a constant spread is used, it be based upon a method that reviews allowable investment returns over time and holds the selected investments over time. One such method would be to use the results of one of the hypothetical portfolios above to determine the constant spread to impute over a future period.

Table 3 demonstrates NICB results when imputing a constant spread return over the ten years from 1993 through 2002 using the average spread of 35 basis points from portfolio B in Table 2. While the average NICB is about the same, the volatility is decreased significantly. The volatility experienced with the constant spread approach is limited to the volatility in the earnings on the amount of excess clearing balance investments due to the change in the federal funds rate, whereas the volatility associated with hypothetical portfolio B also includes the result of changes in the spread between the portfolio yield and the federal funds rate.

TABLE 3.—NICB

[Millions]

Year	Portfolio B	Constant spread
1993	$55.8	$42.3
1994	11.4	46.5
1995	67.7	52.4
1996	29.8	50.5
1997	50.1	51.0
1998	48.9	50.7
1999	18.7	49.3
2000	61.9	53.8
2001	56.2	45.4
2002	82.5	37.5
Average	48.3	48.0
Standard deviation	22.2	5.1

The Board requests comment on whether a long-run average spread over federal funds would be an appropriate basis on which to impute income and, if so, how to take into account the reduced volatility provided by this method compared to the hypothetical portfolio method.

[24] The advisory group included participants from the American Bankers Association, the Independent Community Bankers Association, and the Association of Corporate Credit Unions.

III. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.'' [25] Under this policy, the Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal power or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

This proposal is intended to expand the investment instruments assumed in the NICB calculation to resemble more closely investments pursued by bank holding companies, the services of which are considered to most closely resemble the services provided by Reserve Banks. Imputed investment decisions would be made within a framework that incorporates risk-management measures used in industry and regulatory practice. Accordingly, the Board believes this proposal will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services.

By order of the Board of Governors of the Federal Reserve System, May 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–13505 Filed 5–29–03; 8:45 am]

BILLING CODE 6210–01–P

[25] FRRS 7–145.2.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0270]

Federal Technology Service; Access Certificates for Electronic Services (ACES)

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Access Certificates for Electronic Services (ACES). A request for public comments was published at 68 FR 14238, March 24, 2003. No comments were received.

The ACES Program is designed to facilitate and promote secure electronic communications between online automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates are issued at no cost to individuals based upon their presentation of verifiable proof of identity in an authorized ACES Registration Authority. Business Representative digital signature certificates are issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority. If authorized by law, a fee may be charged for issuance of a Business Representative certificate.

Public comments are particularly invited on: Whether this collection is necessary for the proper performance of the functions of GSA, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* June 30, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0270.

FOR FURTHER INFORMATION CONTACT: Stephen Duncan, Federal Technology Service, GSA (202) 708–7626 or by e-mail at *stephen.duncan@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

One of the primary goals of the emerging Government Services Information Infrastructure (GSII) is to facilitate public access to government information and service through the use of information technologies. One of the specific goals of the GSII is to provide the public with a choice of using Internet-based, online access to the automated information technology application systems operated by government agencies; such access will make it easier and less costly for the public to complete transactions with the government. By law, access to some of these automated information technology application systems can be granted only after the agency operating the system is provided with reliable information that the individual requesting such access is who he/she claims to be, and that he/she is authorized such access. The arms-length transactions envisioned by the GSII require implementation of methods for:

1. Reliably establishing and verifying the identity of the individuals desiring to participate in the ACES Program, based primarily upon electronic communications between the applicant and authorized ACES Registration Authority.

2. Issuing to the individuals who have been successfully identified a means that they can use to uniquely identify themselves to the automated information technology application systems participating in the ACES Program.

3. Electronically and securely passing that identity to the automated information technology application system to which the individual is requesting access.

4. Electronically and securely authenticating that identity, through a trusted third party, each time it is presented to an automated information technology application system participating in the ACES Program.

5. Ensuring that the identified individual requesting access to an automated information technology application system has been duly authorized, by the mangeement of that automated information technology application system, to access that system and perform the transactions desired.

6. Ensuring that the information being exchanged between the individual and the automated information technology application system has not been corrupted during transmission.

7. Reducing the ability of the parties to such transactions to repudiate the actions taken. The current state-of-the-art suggests that digital signature certificate technologies (often referred to as part of ''Public Key Infrastructure, or PKI'') provide a reliable and cost efficient means for meeting many of these GSII requirements. Thus, the ACES Program should be understood to represent an effort to implement and continue a PKI through which members of the public who desire to do so can securely communicate electronically with the online automated information technology application systems participating in the ACES Program.

The initial step for any member of the public to take in order to participate in the ACES Program is to submit an application for an ACES certificate to an authorized ACES Registration Authority. In conjunction with application process, the applicant will be required to submit at least:

a. His/her full name.

b. His/her place of birth.

c. His/her date of birth.

d. His/her current address and telephone number.

e. At least three (3) of the following:

i. Current valid state issued driver license number or number of state issued identification card.

ii. Current valid passport number.

iii. Current valid credit card number.

iv. Alien registration number (if applicable).

v. Social Security Number.

vi. Current employer name, address, and telephone number.

f. If the registration is for a business representative certificate, evidence of authorization to represent that business entity.

The information provided during the process of applying for an ACES certificate constitutes the continued information collection activity that is the subject of this Paperwork Reduction Act notice and request for comments.

B. Description

A detailed description of the current ACES Program is available on the World Wide Web at *http://www.gs.gov/aces,* or through the **FOR FURTHER INFORMATION CONTACT** listed above.

Please note that all ACES identity information collected from the public is covered by the Privacy Act, the Computer Security Act, and related privacy and security regulations, regardless of whether it is provided

directly to an agency of the Federal Government or to an authorized ACES Registration Authority providing ACES-related services under a contract with GSA. Compliance with all of the attending requirements is enforced through binding contracts, periodic monitoring by GSA, annual audits by independent auditing firms, and annual re-accreditation by GSA. Only fully accredited Registration Authorities will be permitted to accept and maintain identity information provided by the public.

The identity information collected will be used only to establish and verify the identity and eligibility of applicants for ACES certificates; no other use of the information is permitted.

Participation in the ACES Program is strictly voluntary, but participation will only be permitted upon presentation of identity information by the applicant, and verification of that information by an authorized ACES Registration Authority.

ACES is designed to permit on-line, arms-length registration through the Internet, which significantly reduces the public's reporting burden. Based upon preliminary tests run on similar systems for gathering identity-related information from the public (*e.g.,* U.S. Passports, initial issuance of state-issued driver's license, etc.), the individual reporting burden for providing identity information for the initial ACES certificate is estimated at an average of 15 minutes, including gathering the information together and entering the data into the electronic forms provided by the authorized ACES Registration Authorities.

No reliable information is yet available to support any estimate relating to the number of individuals who will seek to register to participate in the ACES Program. Thus, no estimate of the overall reporting burden is being provided at this time.

C. Purpose

GSA is responsible for assisting Federal agencies with the implementation and use of digital signature technologies to enhance electronic access to government information and services by all eligible persons. In order to ensure that the ACES program certificates are issued to the proper individuals, GSA will continue to collect identity information from persons who elect to participate in ACES.

D. Annual Reporting Burden:

Respondents: 1,000,000.
Annual Responses: 1.
Average hours per response: 0.25
Burden Hours: 250,000.
Obtaining Copies of Proposal: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0270, Access Certificates for Electronic Services (ACES).

Dated: May 21, 2003.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 03–13459 Filed 5–29–03; 8:45 am]

BILLING CODE 6820–DH–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Task Force on Community Preventive Services.

Times and Dates: 8:30 a.m.–6 p.m., June 11, 2003. 8:30 a.m.–12:30 p.m., June 12, 2003.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available. Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on June 6, 2003.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services, and what works in the delivery of those services.

Matters to be Discussed: Agenda items include briefings on administrative information, methods and intervention reviews; a strategic planning session; and sessions to approve recommendations for the following interventions: School-based Tobacco Use Prevention Education; 1 on 1 Education to Promote Cancer Screening; Improving Pregnancy Outcomes; Collaborative Care for Improving Treatment for Depression, Nutrition and Obesity.

Agenda items are subject to change as priorities dictate.

Contact Person or Additional Information: Peter Briss, M.D., M.P.H., Acting Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia, telephone 770/488–8189.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13510 Filed 5–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Program Announcements for Cooperative Agreements Between the Centers for Disease Control and Prevention (CDC)/ Agency for Toxic Substances and Disease Registry (ATSDR) and the Association of American Medical Colleges, Program Announcement #00075; Association of Schools of Public Health, Program Announcement #99122; and Association of Teachers of Preventive Medicine, Program Announcement #714

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Program Announcements for Cooperative Agreements between CDC/ATSDR, and the Association of American Medical Colleges, Program Announcement #00075; Association of Schools of Public Health, Program Announcement #99122; and Association of Teachers of Preventive Medicine, Program Announcement #714.

Times and Dates: 12 p.m.–12:30 p.m., June 16, 2003. (Open.)

12:30 p.m.–6 p.m., June 16, 2003. (Closed.)

8 a.m.–6 p.m., June 17, 2003. (Closed.)

8 a.m.–2 p.m., June 18, 2003. (Closed.)

Place: Westin Atlanta North, 7 Concourse Parkway, NE., Atlanta, GA 30328, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director,

Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcements #00075, 99122, and 714.

Contact Person for More Information: Joan F. Karr, Ph.D., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–13655 Filed 5–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10086]

Emergency Clearance: Notice of Funding Availability and Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services (CMS).

SUMMARY: Part I of this notice serves as an announcement for emergency clearance of public information collection requirements that have been submitted to the Office of Management and Budget (OMB). The Congress recognized that States face formidable challenges in their efforts to fulfill their legal responsibilities under the Americans with Disabilities Act. The Congress appropriated funds for these ''Real Choice Systems Change Grants'' specifically to improve community-integrated services. We cannot reasonably comply with the normal clearance procedures because of the potential for public harm: the funds set aside for the grants would revert to the general fund and States, together with their disability and aging communities that have already undertaken extensive planning efforts for these grant opportunities, would be significantly harmed.

Part II of this notice serves as an announcement for solicitation of applications for the Real Choice Systems Change Grants for Community Living. Specifically, this notice announces the availability of approximately $35 million in grant funding. These grants are a part of the President's New Freedom Initiative, which calls for the removal of barriers to community living for people with disabilities. CMS is the designated HHS agency with administrative responsibility for this program. These grants are designed to assist states develop enduring infrastructures that support people of any age who have a disability or long-term illness to live and participate in their communities. Applicants include states, state instrumentalities, and other eligible entities as further described in the notice. Also included in this notice is information about the application process.

A second **Federal Register** notice is being published regarding the remaining $5 million of the Real Choice Systems Change Grants for Community Living. In the second notice, the Centers for Medicare & Medicaid Services, in collaboration with the Administration on Aging, will announce a competition for grants to be awarded as cooperative agreements for projects that support the development of state Aging and Disability Resource Center (Resource Center) programs. Resource Center programs will provide person-centered ''one-stop shop'' entry points into the long-term care system at the community level. Resource Centers will serve individuals who need long-term care, their family caregivers, and those planning for future long-term care needs. They will also serve as a resource for health and long-term care professionals and others who provide services to the elderly and to people with disabilities.

DATES: *Deadline for Submission of Grant Applications:* To be considered under the Fiscal Year 2003 funding cycle, grant applications must be submitted by July 29, 2003. All application materials must be submitted by the due date. No materials will be accepted after the deadline. The types of grants and maximum grant awards are summarized in the Real Choice Systems Change Grants for Community Living—FY2003 table.

Applicants' Teleconference (aka: Bidders' Teleconference): Information regarding the time and call-in number will be available on the CMS Web site at: *http://www.cms.hhs.gov/newfreedom/default.asp.* We anticipate that the teleconference will be scheduled early in the month of June. Additionally, CMS staff will be available for questions and answers on an ongoing basis.

APPLICATION MATERIALS: An application kit containing all instructions and forms needed to apply for the Real Choice Systems Change Grants for Community Living can be downloaded from the New Freedom Initiative Web site at: *http://www.cms.hhs.gov/newfreedom/default.asp.* If an organization does not have access to the Internet, an application kit may be obtained by writing or calling: Judith Norris, Centers for Medicare & Medicaid Services, OICS, AGG, Grants Management Staff, Mail Stop C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850; E-mail: *Jnorris1@cms.hhs.gov;* 410–786–5130.

SUBMISSION OF APPLICATION: Applications are due by the closing date listed under *Deadline for Submission of Grant Applications* in the DATE section of this notice. Applications must be submitted both electronically and in paper form. Applications mailed through the U. S. Postal Services or a commercial delivery service will be considered ''on time'' if received by close of business on the closing date, or postmarked (first class mail) by the date specified and received within *five* business days. If express, certified, or registered mail is used, the applicant should obtain a legible dated mailing receipt from the U. S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailings. Applications that do not meet the above criteria will be considered late applications.

Submissions by facsimile (fax) transmission will not be accepted. An original proposal should be submitted with two copies to: Marian Webb, Centers for Medicare & Medicaid Services, OICS, AGG, Grants Management Staff, Mail Stop: C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Additional application instructions are included in the solicitation.

Applicants will not receive official notification that their application has been received on time by CMS. Those submitting late applications will be notified that their applications were not considered in the competition and will be returned without review.

FOR FURTHER INFORMATION CONTACT: Questions about CMS's announcement of funding availability or application

package can be directed to: Mary Guy, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Disabled and Elderly Health Programs Group, Mail Stop: S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–2772, E-mail: *RealChoiceFY03@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Part I—Paperwork Reduction Act Notice

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & 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.

CMS is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. CMS is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with the Trade Act of 2002. CMS cannot reasonably comply with the normal clearance procedures because of an unanticipated event and potential public harm.

CMS seeks emergency approval because of the short timeframe that is available to issue the solicitation, receive and applications, and prepare and release award packages. Because of the increased number of grant opportunities, we are expecting an even larger volume of grant applications than was received for this program in FY 2001.

CMS is requesting OMB review and approval of this collection by July 21, 2003 with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 16, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Type of Information Collection:* Medicaid Program: Real Choice Systems Change Grants for Community Living; *CMS Form Number:* CMS–10086 (OMB# 0938–NEW); *Use:* Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities'' called upon the federal government to assist states and localities to swiftly implement the decision of the United States Supreme Court in Olmstead v. L.C., stating: ''The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of the United States.'' State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; not-for-profit institutions; *Number of Respondents:* 150 *Total Annual Responses:150; Total Annual Burden Hours:* 1500. CMS has submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp* 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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, in order to be considered in the OMB approval process, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below, by July 16, 2003.

Part II—Announcement for Solicitation of Applications for the Real Choice Systems Change Grants for Community Living

A. Background

1. People of all ages who have a disability or long-term illness generally express the same desire to live in the community as do most other Americans. They express a desire to live in their own homes, make decisions about their own daily activities, work, learn, and maintain important social relationships. They express a desire to contribute and participate in their communities and family life. In 1990, the Congress enacted the Americans with Disabilities Act (ADA) (Pub. L. 101–336). The ADA recognized that ''society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem'' (42 U.S.C. 12101(a)(2)). The ADA gave legal expression to the desires and rights of Americans to lead lives as valued members of their own communities despite the presence of disability. Over the past few years, a consensus for assertive new steps to improve the capacity of long-term support systems to respond to the desires of the citizenry has been building. Federal, state, and local governments have begun to take actions to renew and reaffirm a commitment to improving the systems that will support people of all ages with disabilities or long-term illnesses who wish to live in their communities. The President invigorated these efforts in 2001 through his New Freedom Initiative and Executive Order 13217. The Executive Order directs Federal agencies to provide assistance to States and to identify federal policy barriers that might be removed in order to achieve fulfillment of ADA.

2. FY 2001 Real Choice Systems Change Grants for Community Living: On May 22, 2001, CMS published a Notice of Funding Availability for the Systems Change Grants for Community Living in the **Federal Register** (66 FR 28183). Under that notice, CMS invited proposals from states and others, in partnership with their disability and aging communities, to design and implement effective and enduring improvements in community long-term support systems. The response of states and other eligible entities to these grant opportunities was extraordinary. The response revealed a strong interest by states and others in improving community-based systems and for federal technical and resource

assistance. In July 2001, CMS received 161 applications for these Systems Change grants from 51 States and Territories (48 States, the District of Columbia, and 2 Territories) requesting funding totaling approximately $240 million. In September 2001, CMS awarded the first Real Choice Systems Change Grants, totaling approximately $70 million, to 37 States and 1 territory. The awards consisted of: 25 Real Choice Systems Change grants; ten Community-Integrated Personal Assistance Services and Supports grants; 12 Nursing Facility Transitions, State Program Grants; and five Nursing Facility Transitions, Independent Living Partnership grants. CMS also awarded two grants (one to each grantee) for technical assistance to Rutgers and ILRU, forming the Community Living Exchange Collaborative: A National Technical Assistance Program.

3. FY 2002 Real Choice Systems Change Grants for Community Living: In FY 2002, the Congress appropriated an additional $55 million in Systems Change grant funds specifically to improve community-integrated services (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002 Pub. L. 107–116). Due to the extraordinary response CMS received in FY 2001 to the Systems Change Grants for Community Living solicitation, no new applications were accepted for FY 2002. Instead, CMS continued to process and award applications submitted in 2001, beginning with the highest-ranked applications that were not funded in FY 2001. Notice of the process for awarding the FY 2002 grants was published in the **Federal Register** on April 26, 2002 (66 FR 20791). The FY 2002 awards consisted of: 25 new Real Choice Systems Change grants; 8 new Community-Integrated Personal Assistance Services and Supports grants; 11 new Nursing Facility Transitions, State Program grants; and 5 new Nursing Facility Transitions, Independent Living Partnership grants. CMS also made supplemental awards to the two the Grantees for the Community Living Exchange Collaborative: A National Technical Assistance Program and five supplemental awards to five states that received Real Choice Systems Change grants in FY 2001. The five supplemental Real Choice awards ensured that these state grantees were not disadvantaged in award amounts received compared to states that received FY 2002 awards. The list of ''Qualified Applicants'' for purposes of FY 2002 grant awards as published was correct with the following exception: the State of California declined its ''preliminary'' award of a Nursing Facility Transitions, State Program Grant (NFT–SP) and as a result, the State of Louisiana, the next highest-ranked applicant in this category, was awarded an NFT–SP grant.

B. Overview and General Requirements for All FY 2003 Real Choice System Change Grants for Community Living

The following distinct competitive grant solicitations comprise the Real Choice Systems Change Grants for Community Living:

- *Respite for Adults:* The purpose of the Respite for Adults grants is to enable states to conduct studies assessing the feasibility of developing respite projects for caregivers of adults through Medicaid or other funding streams. States may examine the feasibility of providing respite for adults, as if it were a Medicaid service, to a limited target group (*i.e.*, the elderly; individuals with mental illness, developmental disability, physical disability, etc.) Such projects will be expected to build in elements that are responsive to individual needs and offer the opportunity for consumer direction. Approximately $525,000 to $1.4 million is available to assist states in this effort.
- *Respite for Children:* The purpose of the Respite for Children grants is to enable States to conduct feasibility studies and explore the development for Medicaid respite projects specifically targeted for caregivers of children. States may examine the feasibility of providing respite for children, as if it were a Medicaid service, to a limited target group (*i.e.*, children with a physical disability, mental illness, developmental disability, etc.) Such projects will be expected to build in elements that are responsive to individual needs and offer the opportunity for consumer direction. Approximately $525,000 to $1.4 million is available to assist states in this effort.
- *Community-Based Treatment Alternatives for Children (C–TAC):* The purpose of the C–TAC grants is to assist states in developing a comprehensive, community-based mental health service delivery system, through Medicaid, for children with serious emotional disturbances who would otherwise require care in a psychiatric residential treatment facility (PRTF). Currently, Medicaid provides inpatient psychiatric services for children under age 21 in hospitals, and extends these Medicaid benefits to children in PRTFs. However, PRTFs do not meet the CMS definition of ''hospital'' so they do not qualify as institutions against which states may measure § 1915(c) waiver costs. Over the last decade, PRTFs have become the primary providers for children with serious emotional disturbances requiring an institutional level of care however, states have been unable to use § 1915(c) waiver authority to provide Medicaid-funded home and community-based alternatives to care, which would keep the children in their homes and with their families. The funds available through this solicitation will assist states in assessing community-based alternatives to residential treatment or institutionalization. Approximately $525,000 to $1.4 million is available to assist states in this effort.
- *Quality Assurance and Quality Improvement in Home and Community-Based Services (QA/QI in HCBS):* The purpose of QA/QI in HCBS grants is to assist states to: (a) fulfill their commitment to assuring the health and welfare of individuals who participate in the state's home and community-based waivers under § 1915(c) of the Social Security Act, (b) develop effective and systematic methods to meet statutory and CMS requirements by the use of ongoing quality improvement strategies, and (c) develop improved methods that enlist the individual and community members in active roles in the quality assurance and quality improvement systems. Approximately $4,320,000 to $15 million is available to assist states in this effort.
- *Independence Plus Initiative:* The purpose of Independence Plus Initiative grants is to assist states in meeting the federal expectations established by CMS for the approval of self-directed program waivers and demonstration projects within the Independence Plus framework. These expectations include: Person-Centered Planning, Individual Budgeting, Self-Directed Supports (including Financial Management Services and Supports Brokerage), and Quality Assurance and Improvement Systems (including the participant protections of emergency back-up and viable incident management systems). Approximately $2,880,000 to $8 million is available to assist states in this effort.
- *Money Follows the Person Rebalancing Initiative:* The purpose of this initiative is to enable states to develop and implement strategies to reform the financing and service designs of state long-term support systems so that (a) a coherent package of State Plan and HCBS waiver services is available in a manner that permits funding to ''follow the person'' to the most appropriate and preferred setting, (b) financing arrangements that enable transition services for individuals who transition between institution and

community settings. Approximately $5.5 million to $15 million is available to assist states in this effort.

• *Community-Integrated Personal Assistance Services and Supports (C–PASS):* Personal assistance is the most frequently used service that enables people with a disability or long-term illness to live in the community. Many states have taken a leadership role in designing systems that not only offer the basic personal assistance service, but also make that service available in a manner that affords consumers maximum control over the selection of individuals working on their behalf and the manner in which services are provided. These grant funds will be used by states to improve personal assistance services that are consumer-directed or offer maximum individual control. Approximately $1.6 million to $6 million is available to assist states that did not receive a C–PASS grant in either FY 2001 or FY 2002. FY 2001 C–PASS grantees are: Alaska, Arkansas, Guam, Michigan, Minnesota, Montana, Nevada, New Hampshire, Oklahoma, and Rhode Island. FY 2002 C–PASS grantees are: Colorado, District of Columbia, Hawaii, Indiana, Kansas, North Carolina, Tennessee, and West Virginia. Only states that did not receive a C–PASS grant in either FY 2001 or FY 2002 are eligible to apply for FY 2003.

• *National State-to-State Technical Assistance Program for Community Living:* This national technical assistance grant will support all of the FY 2003 Real Choice Systems Change Grants for Community Living efforts. CMS expects that the grantee will engage in activities that include: (a) Providing technical assistance to the FY 2003 Real Choice Systems Change grantees, the Technical Assistance for Consumer Task Forces grantee, and others; (b) providing on-site state-to-state technical assistance; (c) developing technical assistance materials; (d) developing or providing expertise for states and children and adults of any age with a disability or long-term illness; (e) working with individual states, national associations of state agencies, consumer organizations, the National Governors Association, the National Conference of State Legislatures, and others to collect, refine, and disseminate information that aids in the effective administration of programs for community living; and (f) developing, gathering, analyzing, and disseminating relevant practical information. Approximately $4.4 million is available for this grant.

• *Technical Assistance for Consumer Task Forces:* The purpose of this grant, as emphasized by Congress, is to ''provide expanded technical assistance to the consumer task forces involved with the Real Choice Systems Change Grant program by contracting with a consortium of consumer-controlled organizations for people with disabilities.'' Ensuring technical assistance by and for consumers on consumer task forces is one way to support the involvement of crucial stakeholders in the Real Choice Systems Change Grants for Community Living. Under this grant opportunity, CMS is accepting proposals from consortia of consumer-controlled organizations to provide technical assistance to the consumer task forces of the Grantees of Real Choice Systems Change Grants for Community Living Project funds may be used to organize and provide technical assistance to the consumer task forces that are involved with planning and implementation of the grants funded under the Real Choice Systems Change Grants for Community Living. Project funds may be used, for example, to hire staff for this project, to hire contractor(s) to contribute to the project, to hold meetings, for travel, for publications, for training and development of new programs, and to facilitate the progress of the consumer task forces. Approximately $550,000 is available for this grant.

• *Family-to-Family Health Care Information and Education Centers:* The purpose of these grants is to support the development of Family-to-Family Health Care Information and Education Centers (Information and Education Centers). Organizations will use these awards to establish statewide family-run centers that will (a) provide education and training opportunities for families with children with special health care needs, (b) develop and disseminate needed health care and HCBS information to families and providers, (c) collaborate with other Family-to-Family Health Care Information and Education Centers to benefit children with special health care needs, and (d) promote the philosophy of individual and family-directed supports CMS is collaborating with the Health Resources and Services Administration (HRSA) in this initiative. In 2001, the HRSA, Maternal and Child Health Bureau, initiated a program to develop the capacities of families with children with special health care needs and assist states meet their Healthy People 2010 objectives for community-based services for children with special health care needs. The HRSA program is also entitled Family-to-Family Health Care Information and Education Centers. (For information on the Healthy People 2010 initiative, please visit the Web site at: *http://www.healthypeople.gov*.) CMS recognizes the wealth of knowledge that exists among parents who have years of experience with the long-term care system, and the potential for this knowledge to be of assistance to both other families and service providers. The goals of this initiative are to increase both access to and choice in HCBS for families who have children with special health care needs. Applicants must demonstrate that the project (a) establishes new capacity, (b) does not duplicate existing work or supplant existing funding, and (c) devotes all funding under the new proposal to endeavors that advance the goal and vision of the Information and Education Centers grant program. Approximately $875,000 to $1.1 million is available for these efforts.

1. *Amount and Number of Grants to be Awarded:* The Real Choice Systems Change Grants for Community Living—FY 2003 table indicates the expected range of awards for each type of grant. CMS reserves the right to offer a funding level that differs from the requested amount, and to negotiate with the applicant with regard to the appropriate scope and intensity of effort that would be appropriate and commensurate with the final funding level.

2. *Purpose:* Several grant opportunities comprise the FY 2003 Real Choice Systems Change Grants for Community Living solicitation. They are described in this notice and more fully in the solicitation. Some of these grants are intended to assist states in assessing and exploring how to best address problems in specific topic areas that CMS has learned are of great concern through the New Freedom Initiative, National Listening Session, and Open Door Forums. Other grants are intended as catalysts for the development of specific home and community-based waivers (*i.e.*, Independence Plus) or for the development of systems of quality assurance and quality-improvement within existing home and community-based waivers. The new C–PASS grants will enable states that have not previously received a C–PASS grant to improve personal assistance services and supports that are consumer-directed or offer maximum individual control.

3. *Who is Eligible to Apply: States* may apply for any grant except the Technical Assistance for Consumer Task Forces and the Family-to-Family Health Care Information and Education Centers grants. By ''State'' we refer to the definition provided under 45 CFR 74.2 as ''any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.'' By ''territory or possession,'' we mean Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Any state agency or instrumentality may apply for funding under the various grant opportunities except the Technical Assistance for Consumer Task Forces and the Family-to-Family Health Care Information and Education Centers grants. If an application is from an applicant that is not the Single State Medicaid Agency, a letter of endorsement from the Governor, State Medicaid Director, or Agency administering a relevant section of the 1915(c) home and community-based waiver must accompany the application; this requirement does not apply to applicants for the National State-to-State Technical Assistance Program for Community Living or the Technical Assistance for Consumer Task Forces grants.

In the 2001 solicitation, any entity was able to apply for the C–PASS grants, which are to be awarded at the rate of one per State. There are still a number of states that have not received C–PASS grants. Based upon this year's allocation of funding, and consistent with the intent of the original 2001 solicitation, CMS will to retain the rate of one C–PASS grant award per state. This decision will enable more states to participate in this important program. Thus, the following states that received a C–PASS grant in FY 2001 or FY 2002 are ineligible to apply for FY 2003 C–PASS funding:

- FY 2001 C–PASS grantees: Alaska, Arkansas, Guam, Michigan, Minnesota, Montana, Nevada, New Hampshire, Oklahoma, and Rhode Island; and
- FY 2002 C–PASS grantees: Colorado, District of Columbia, Hawaii, Indiana, Kansas, North Carolina, Tennessee, and West Virginia.

For additional information on the FY 2001 and FY 2002 C–PASS grantees, please visit our contractor's Web site at: *http://www.hcbs.org.*

Any entity may apply for the Technical Assistance for Community Living Grant.

Any nonprofit organization as defined in HHS GPD 1.02 B as ''[a] corporation or association whose profits may not lawfully accrue to the benefit of any private shareholder or individual'' may apply for the Family-to-Family Health Care Information and Education Center grant. Nonprofits whose mission includes services to families with children with special health care needs and whose Board of Directors has a majority of parents of children with special health care needs are especially encouraged to apply. Only one application per state will be accepted for this type of grant. Applicants for this type of grant must also have a letter of endorsement from the State Medicaid Director or the Governor. In addition, states that currently operate Family-to-Family Family Health Care Information and Education Centers (funded through the Health Resources and Services Administration) are ineligible for funding under this initiative.

Only consortia of consumer-controlled organizations may apply for the Technical Assistance for Consumer Task Forces Grant. ''Consumer-controlled organization'' means an organization that is governed by individuals who have a disability or long-term illness. Individuals of any age who rely upon long-term supports and services as a result of a disability or long-term illness must represent more than half of such organization's Board of Directors or other controlling structure.

Consortia that apply for this technical assistance grant must represent individuals who have disability or long-term illness (*e.g.*, people with a developmental disability, mental retardation, mental illness, physical disabilities) and those who are elderly. Since one organization may not possess the required expertise for all target groups, we expect the consortia to address the need for commitment from a significant number of highly knowledgeable individuals and organizations. It is not necessary for the consortia to have existed prior to this project. It can be an entity that has organized for purposes of applying for this grant, although one organization must have the capacity to receive the grant award and serve as the project lead.

States may and are encouraged to apply for more than one of the several different types of grant. For example, a state may apply for a Respite for Children and also for a Money Follows the Person Rebalancing Initiative grant. Also, different state agencies may apply for different grant opportunities. For example, the Single State Medicaid agency might apply for the C–PASS grant and the agency administering the section 1915(c) waiver might apply for the Money Follows the Person Rebalancing Initiative Grant. However, no state may be awarded more than one grant per state per type of grant opportunity. For example, a state may not receive two C–PASS grants, two Respite for Children grants, or two Independence Plus Initiative grants. In addition, if an applicant submits the same scope of work or similar activities under more than one of this year's grant opportunities, or activities are currently funded under existing grants, CMS will not consider the application for funding. CMS also reserves the right not to fund an application that, in its estimation, duplicates existing efforts regardless of the applicant's ranking by reviewers.

Faith-based organizations are encouraged to apply for the National State-to-State Technical Program for Community Living, Technical Assistance for Consumer Task Forces, and the Family-to-Family Health Care Information and Education Centers Grants.

CMS will not fund through this round of grants those efforts or activities that are already being funded under an existing Real Choice Systems Change Grant (funded in FY 2001 or FY 2002) or other grants. If a grantee proposes to significantly expand an earlier-funded project, the applicant must specifically describe this expansion in its application. CMS does encourage states to seek private sector grant opportunities (*e.g.*, grants from foundations) to augment or coordinate with the Real Choice Systems Change Grants for Community Living.

In the event that CMS receives more than one application for any grant opportunity for which the ''one per state'' standard applies, CMS reserves the right to select which application to consider for funding.

CMS reserves the right to assure reasonable balance in the awarding of grants in terms of key factors such as geographic distribution and broad target group representation. CMS also reserves the right to redistribute grant funds based upon the number and quality of applications per type of grant (*e.g.*, to adjust the minimum or maximum awards permitted or adjust the aggregate amount of federal funds allotted to a particular category of grants).

4. *Match Requirements:* Grantees are required to make a non-financial recipient contribution of five percent (5%) of the total grant award (including all direct and indirect costs). Non-financial recipient contributions may include the value of goods and/or services contributed by the Grantee (*e.g.*, salary and fringe benefits of staff devoting a percentage of their time to the grant not otherwise included in the budget or derived from federal funds). Recipient contributions must be included in the applicant's budget in Item 15 (Estimated Funding) on Standard Form 424A and described in the budget narrative/justification section of the application. The non-financial

match requirement may also be satisfied if a third party participating in the grant makes an ''in-kind contribution,'' provided that the Grantee's contribution and/or the third-party in-kind contribution equals 5% of the total grant award (including all direct and indirect costs). Third-party ''in-kind contributions'' may include the value of the time spent by consumer task force members (using appropriate cost allocation methods to the extent that non-Federal funds are involved) who specifically contribute to the design, development and implementation of the grant.

Intergovernmental Review of Federal Programs—''Intergovernmental Review of Federal Programs,'' Executive Order 12372 (45 CFR Part 100), does not apply to this solicitation.

Authority: The Real Choice Systems Change Grants for Community Living are authorized pursuant to § 1110 of the Social Security Act. Section 1110 (a)(1)(A) of the Social Security Act authorizes CMS make ''grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those * * * which will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto * * *'' CMS has structured its efforts under § 1110 into eight themes. The Real Choice Systems Change Grants are part of CMS's Research and Demonstration efforts under Theme 5: Strengthening Medicaid, State Children's Health Insurance Program (SCHIP), and State Programs. This effort includes research on ways to improve access to and delivery of health care to the persons served by Medicaid. These particular grants also support the President's New Freedom Initiative, which calls for the removal of barriers to community living for people with disabilities. Funding and Congressional language was provided in the Consolidated Appropriations Resolution, 2003 (Pub. L.108–7). Although Congress appropriated $40 million in funding for a new round of Real Choice Systems Change Grants for Community Living for FY 2003, Congress also passed a 0.65% general reduction in the 2003 appropriation that was distributed across federal programs, including this appropriation, so the final amount available is slightly less than $40 million.

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, 7500 Security Boulevard, Mail Stop: C5–16–03, Baltimore, MD 21244–1850. Fax Number: (410) 786–3064. Attn: Julie Brown;

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Brenda Aguilar, CMS Desk Officer.

Dated: May 27, 2003.

Dawn Willinghan,

Acting CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

REAL CHOICE SYSTEMS CHANGE GRANTS FOR COMMUNITY LIVING—FY 2003

Grant opportunity	Application deadline	Who may apply? [1]	Max. number of grant awards per State per type of grant	Maximum award	Anticipated average award	Maximum projected period	Percent allowable for direct services [2]	Estimated number of awards
Feasibility Studies and Development Grants								
1. Respite for Adults (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	$100,000	$75,000	Up to 36 mos	0	7–14
2. Respite for Children (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	100,000	75,000	Up to 36 mos	0	7–14
3. Community-Based Treatment Alternatives for Children (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	100,000	75,000	Up to 36 mos	0	7–14
Research and Demonstration Grants								
4. Quality Assurance and Quality Improvement in Home and Community-Based Services (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	500,000	360,000	Up to 36 mos	10	12–30
5. Independence Plus Initiative (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	500,000	360,000	Up to 36 mos	20	8–16
6. Money Follows the Person Rebalancing Initiative (CFDA 93.779).	July 29, 2003.	Any State Agency or Instrumentality.	1	750,000	550,000	Up to 36 mos	10	10–20
7. Community-IntegratedPersonal Assistance Services and Supports (CFDA 93.779).	July 29, 2003.	Any State Agency or instrumentality.	[3] 1	600,000	400,000	36 mos	20	4–10
Technical Assistance to States, State Advisory Committees and Families								
8. National State-to-State Technical Assistance Program for Community Living (CFDA 93.779).	July 29, 2003.	Any Entity	N/A	4,400,000	4,400,000	36 mos	0	1
9. Technical Assistance for Consumer Task Forces (CFDA 93.779).	July 29, 2003.	Any consortium of consumer-controlled organizations for people with disabilities [4].	N/A	550,000	550,000	36 mos	0	1

REAL CHOICE SYSTEMS CHANGE GRANTS FOR COMMUNITY LIVING—FY 2003—Continued

Grant opportunity	Application deadline	Who may apply? [1]	Max. number of grant awards per State per type of grant	Maximum award	Anticipated average award	Maximum projected period	Percent allowable for direct services [2]	Estimated number of awards
10. Family-to-Family Health Care Information and Education Centers (CFDA 93.779).	July 29, 2003.	Any Nonprofit Organization [5].	1	150,000	145,000	36 mos	0	6–10

[1] The Single State Medicaid Agency or any other agency or instrumentality of a state (as determined under state law) may apply for any grant opportunity except the Technical Assistance for Consumer Task Forces Grant. By ''State'' we refer to the definition provided under 45 CFR 74.2 as ''any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.'' ''Territory or possession'' is defined as Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. If an application is from an applicant that is not the Single State Medicaid Agency, a letter of endorsement from the Governor, State Medicaid Director, or Agency administering a relevant section of the 1915(c) home and community-based waiver must accompany the application; this requirement does not apply to applicants for the National State-to-State Technical Assistance Program for Community Living, the Technical Assistance for Consumer Task Forces Grants, or the Family-to-Family Health Care Information and Education Centers Grants.

[2] Direct Services do not include expenses budgeted for consumer task force member participation in Real Choice Systems Change for Community Living Conferences or technical assistance conferences sponsored by CMS or its national technical assistance providers for purposes of Real Choice Systems Change Grants for Community Living.

[3] For the Community-Integrated Personal Assistance Services and Supports Grants (C–PASS), states that received a C–PASS grant in FY 2001 or FY 2002 are ineligible to apply for FY 2003 C–PASS funding. FY 2001 C–PASS Grantees are: Alaska, Arkansas, Guam, Michigan, Minnesota, Montana, Nevada, New Hampshire, Oklahoma, and Rhode Island. FY 2002 C–PASS Grantees are: Colorado, District of Columbia, Hawaii, Indiana, Kansas, North Carolina, Tennessee, and West Virginia. Only states that did not receive a C–PASS grant in either FY 2001 or FY 2002 are eligible to apply.

[4] Consumer-controlled organization means an organization that is governed by individuals who have a disability or long-term illness. Individuals of any age, who rely upon long-term supports and services as a result of a disability or long-term illness, must represent more than half of such organization's Board of Directors or other controlling structure.

[5] Applicants for this type of grant must also have a letter of endorsement from the State Medicaid Director or the Governor or. In addition, states that currently operate Family-to-Family Family Health Care Information and Education Centers (funded through the Health Resources and Services Administration) are ineligible for funding under this initiative. Information and Education Centers application.

[FR Doc. 03–13582 Filed 5–27–03; 3:27 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–131]

Agency Information Collection Activities: Proposed Collection; Expedited Review and Clearance; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

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.

We are, however, requesting an expedited review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are abbreviating the normal comment period of 60 days for the first notice to 30 days. We are requesting an expedited review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. We cannot reasonably comply with the normal clearance procedures because to do so could have serious consequences for Medicare beneficiaries, health care providers, Medicare contractors and software vendors.

CMS is requesting OMB's expedited review and approval of this collection. Written comments and recommendations will be accepted from the public if received by the individual designated below by June 30, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice; *Form No.:* CMS–R–131 (OMB# 0938–0566); *Use:* Physicians, practitioners, suppliers, and providers furnishing Part A or Part B items or services may bill a patient for items or services denied by Medicare as not reasonable and necessary if they informed the patient, before furnishing the item or service, that Medicare was likely to deny payment for the items or services and the patient, after being informed, agreed to pay for the items or services; *Frequency:* On occasion; *Affected Public:* Businesses or other for-profit, Individuals or households, Not-for-profit institutions; *Number of Respondents:* 1,028,585; *Total Annual Responses:* 19,660,110; *Total Annual Hours:* 1,686,285.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

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.hcfa.gov/regs/prdact95.htm,* 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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by June 30, 2003.

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: May 12, 2003.

Julie Brown,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–13664 Filed 5–28–03; 11:17 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3116–N]

Medicare Program; Request for Nominations for Members for the Medicare Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for consideration for membership on the Medicare Coverage Advisory Committee.

DATES: Nominations will be considered if received at the designated address, as provided below, no later than 5 p.m. on June 30, 2003.

ADDRESSES: You may mail nominations for membership to the following address: Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Attention: Michelle Atkinson, 7500 Security Blvd., Mail Stop: Central Building 1–09–06, Baltimore, MD 21244.

A copy of the Secretary's Charter for the Medicare Coverage Advisory Committee (MCAC) can be obtained from Maria Ellis, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Mail Stop: Central Building 1–09–06, Baltimore, MD 21244, or by e-mail to *mellis@cms.hhs.gov*. The charter is also posted on the Web at *http://www.cms.hhs.gov/mcac/default.asp*.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Blvd., Baltimore, MD 21244, 410–786–2881.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing establishment of the Medicare Coverage Advisory Committee (MCAC). The Secretary signed the initial charter for the MCAC on November 24, 1998. The charter has been renewed by the Secretary and will terminate on November 24, 2004, unless renewed again by the Secretary.

The Medicare Coverage Advisory Committee is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MCAC consists of a pool of 100 appointed members. Members are selected from among authorities in clinical medicine of all specialties, administrative medicine, public health, epidemiology and biostatistics, methodology of trial design, biologic and physical sciences, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions. A maximum of 88 members are standard voting members, 12 are nonvoting members, 6 of which are representatives of consumer interests, and 6 of which are representatives of industry interests.

The MCAC functions on a committee basis. The committee reviews and evaluates medical literature, reviews technology assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The Committee works from an agenda provided by the Designed Federal Official that lists specific issues, and develops technical advice to assist us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare.

A few vacancies exist on the current MCAC roster, and terms for some members currently serving will expire in 2003. Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the MCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations must be accompanied by a curricula vitae. Nomination packages should be sent to Michelle Atkinson at the address above.

Criteria for Members

Nominees must have expertise and experience in one or more of the following fields: clinical medicine of all specialties, administrative medicine, public health, epidemiology and biostatistics, methodology of trial design, biologic and physical sciences, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions.

We are also seeking nominations for nonvoting consumer and industry representatives. Nominees for these positions must possess appropriate qualifications to understand and contribute to the MCAC's work.

Nominations must state that the nominee is willing to serve as a member of the MCAC and appears to have no conflict of interest that would preclude membership. It would be very helpful if all curricula vitae included the following: date of birth, place of birth, social security number, title and current position, professional affiliation, home and business address, telephone and fax numbers, e-mail address, and list of expertise. In the nominations letter specify whether applying for voting member, industry representative, or consumer representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the MCAC by appropriate action before its termination on November 24, 2004. A member may serve after the expiration of the member's term until a successor has taken office. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 23, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–13609 Filed 5–29–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2177–FN]

Medicare and Medicaid Programs; Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to re-approve the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for continued recognition as a national accreditation program for hospice facilities seeking to participate in the Medicare or Medicaid programs.

EFFECTIVE DATE: This final notice is effective June 19, 2003 through June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice, provided certain requirements are met. Section 1861(dd)(1) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice program. Provider agreement regulations are located in 42 CFR part 489, and regulations pertaining to the survey and certification of facilities are located in 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice facility must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care.

Generally, in order to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418 of our regulations. Then, the hospice facility is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we would ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurances that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner as determined by us. The JCAHO's term of approval as a recognized accreditation program for hospice facilities expires June 18, 2003.

II. Deeming Applications Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period we must publish a notice in the **Federal Register** of our approval or denial of the application.

III. Provisions of the Proposed Notice

On January 24, 2003, we published a proposed notice in the **Federal Register** (68 FR 3532) announcing the JCAHO's request for reapproval as a deeming organization for hospices. In this notice, we specified in detail our evaluation criteria. Pursuant to section 1865(b)(2) of the Act and our regulations at § 488.4, we conducted a review of the JCAHO application in accordance with the criteria specified in our regulation, which include, but are not limited to the following:

- An onsite administrative review of JCAHO's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of JCAHO's hospice accreditation standards to our current Medicare hospice conditions for participation.
- A documentation review of JCAHO's survey processes to:

+ Determine the composition of the survey team, surveyor qualifications, and the ability of JCAHO to provide continuing surveyor training.

+ Compare JCAHO's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ Evaluate JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. The monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

+ Assess JCAHO's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ Establish JCAHO's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of JCAHO's survey process.

+ Determine the adequacy of staff and other resources.

+ Review JCAHO's ability to provide adequate funding for performing required surveys.

+ Confirm JCAHO's policies for whether surveys are announced or unannounced.

+ Obtain JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether JCAHO's

requirements met or exceeded the Medicare conditions of participation for hospices. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between JCAHO and Medicare's Conditions and Survey Requirements

We compared the standards contained in JCAHO's ''Comprehensive Accreditation Manual for Home Care'' (CAMHC) and its survey process in the ''Request for Continued Deeming for Hospice Handbook'' with the Medicare hospice conditions for participation and our State and Regional Operations Manual. Our review and evaluation of JCAHO's deeming application, which were conducted as described in section III of this notice yielded the following:

- In order to meet the requirements of § 488.4(a)(4)(v), JCAHO provided a copy of their Conflict of Interest and Financial Integrity policy that is required to be signed by all JCAHO surveyors.
- JCAHO provided a list of all full and partial hospice accreditation surveys scheduled to be performed by the organization in 2002 and 2003 to satisfy our requirements at § 488.4(a)(10).
- To satisfy the requirements of § 488.4(b)(3)(v), JCAHO provided documentation that allows its surveyors to serve as witnesses if we take an adverse action based on accreditation findings.
- In order to comply with § 418.100(k)(2)(i), JCAHO agreed to add to its ''intent'' statement that Medicare certified hospice, facilities require that a physician must order all medications for the patient.
- To comply with § 418.22(b), JCAHO agreed to add to their ''intent'' statement that in a Medicare certified hospice ''terminally ill'' means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the terminal illness runs its normal course.

B. Term of Approval

Based on the review and observations described in section IV of this final notice, we have determined that JCAHO's requirements for hospices meet or exceed our requirements. Therefore, we recognize the JCAHO as a national accreditation organization for hospices that request participation in the Medicare program, effective June 19, 2003 through June 19, 2009.

V. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, specified in 42 CFR part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690.

VI. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 98–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes JCAHO as a national accreditation organization for hospices that request participation in the Medicare and Medicaid programs. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in hospices already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem hospices accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this notice will not significantly affect the rights of States, local, or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: April 18, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–13471 Filed 5–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0201]

Minimizing Medication Errors—Methods for Evaluating Proprietary Names for Their Confusion Potential; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), in cooperation with the Pharmaceutical Research and Manufacturers Association (PhRMA) and the Institute for Safe Medication Practices (ISMP), is announcing a public meeting to explore current methods being used to evaluate proprietary drug names to reduce medication errors due to similarity in drug names. The goal of the meeting is to solicit views on a recommendation by the Department of Health and Human Services (HHS) that drug manufacturers perform proprietary name testing prior to submitting new

drug applications (NDAs) and abbreviated new drug applications (ANDAs) to FDA. The input received at the workshop and from comments received during and after the workshop may be considered in developing a draft guidance on this topic.

DATES: The public meeting will be held on June 26, 2003, from 8 a.m. to 5:30 p.m. Registrants must sign in beginning at 7:30 a.m. on June 26. Submit written or electronic requests to speak at the public meeting by June 13, 2003. Written or electronic comments on the questions will be accepted until July 15, 2003.

ADDRESSES: The public meeting will be held at the Renaissance Washington DC Hotel, 999 9th St. NW., Washington, DC 20001, 202–962–4470. The hotel may be reached by Metro using the Gallery Place/Chinatown Station on the red line. Seating will be limited to the first 300 people registered.

Submit written or electronic requests to speak and comments to Mary Gross (see **FOR FURTHER INFORMATION CONTACT**) by June 13, 2003. A transcript of the workshop will be available for review after the meeting at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and on the Internet at http://www.fda.gov/ohrms/dockets.

FOR FURTHER INFORMATION CONTACT:

Those wishing to speak should contact: Mary Gross, Office of Drug Safety (HFD–400), Center for Drug Evaluation and Research (CDER), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7849, e-mail: grossm@cder.fda.gov.

Those wishing to attend the meeting should contact: Elizabeth Scheiman, PhRMA, 1100 15th St. NW., Washington, DC 20005, 202–835–3533, FAX: 202–572–7797, e-mail: elizabeth.scheiman@phrma.org.

Those wishing to attend the meeting should preregister by June 20, 2003. You will be asked to provide your name, affiliation, and e-mail address to register.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has determined that many of the medication errors reported to the agency result from medical products having proprietary names that look or sound like the names of other medical products. Reducing the potential for medication errors due to proprietary name confusion is part of FDA's ongoing medical product risk management effort.

Recommendation #7.3 in the December 1999 Institute of Medicine report proposed that FDA ''require pharmaceutical companies to test (using FDA approved methods) proposed drug names to identify and remedy potential sound alike and look alike confusion with existing drug names.'' Subsequently, the Office of the Secretary published Recommendation #238 (from the November 21, 2002, report from the HHS Advisory Committee on Regulatory Reform). This recommendation calls for FDA to shift, in most cases, from performing drug name safety testing to reviewing data submitted by sponsors who have followed protocols designed to evaluate their products' names for possible look-alike and sound-alike errors prior to FDA approval.

This meeting is intended to encourage an open public discussion with representatives from industry, the health care professions, consumer groups, academia, or other interested individuals on how best to minimize the potential for medication errors due to similarities in drug names, including discussion of current methods and approaches being used to evaluate the potential for name confusion.

This public meeting is being cosponsored by FDA, ISMP, and PhRMA. The meeting discussion will not address other factors that may contribute to medication errors such as poor handwriting, incomplete patient and drug information, the use of abbreviations, or working and staffing conditions. The meeting will also not cover the evaluation of proprietary names for their promotional implications. FDA will be developing questions to help facilitate discussion and obtain public feedback. Questions will be available on the CDER workshop Web site at http://www.fda.gov/cder/workshop.htm (choose Minimizing Medication Errors—Evaluating the Drug Naming Process; Public Meeting).

II. Scope of the Meeting

The meeting will include expert speakers from regulated industry, academia, health professional groups, and FDA. Independent experts will discuss the use of sampling, questionnaire design, handwriting and voice recognition models, expert committees, computer assisted decision analysis, and failure modes and effects analysis as a potential tool to minimize naming errors resulting from look-alike and sound-alike names. Panels will be assembled to stimulate discussion among the experts and with the audience. Time will be allowed for persons who wish to provide comments on the questions posed in the **Federal Register**. Speakers who wish to participate in the open public hearing must register by June 2, 2003. Time will also be allowed for questions and answers after each panel discussion.

III. Registration and Requests for Oral Presentation

To speak at the meeting, you must preregister by June 2, 2003. Requests must be submitted electronically or in writing. In your request to speak, you should state the questions you will be addressing and the amount of time you wish to speak. Requests to speak will be accepted on a first-come, first-served basis. Individuals who register to speak will be notified of the scheduled time before the workshop and will have reserved seating. Depending on the number of speakers, FDA may need to limit the time allotted for each presentation. Speakers must submit two copies of each presentation by the registration date. If you need special accommodations due to a disability, please inform the registration contact person when you register. Presentations should be limited to the questions being made available on the Internet at http://www.fda.gov/cder/workshop.htm. Preregistration is necessary to attend this meeting, as seating is limited. Attendees should preregister by June 20, 2003.

IV. Request for Comments

Regardless of attendance at the meeting, interested persons may submit written or electronic comments on the issue of similarity in drug naming or questions posed on http://www.fda.gov/ohrms/dockets to the Dockets Management Branch (see **ADDRESSES**). You should annotate and organize your comments to identify the specific question or questions you are addressing. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Transcripts of the hearing also will be available for review at the Dockets Management Branch.

Dated: May 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13591 Filed 5–28–03; 11:17 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5047]

Guidance for Industry on Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling.'' This guidance provides recommendations to sponsors planning to conduct studies to assess the influence of hepatic impairment on the pharmacokinetics and, where appropriate, the pharmacodynamics of drugs or therapeutic biologics.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this 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 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (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 document.

FOR FURTHER INFORMATION CONTACT:

Mehul U. Mehta, Center for Drug Evaluation and Research (HFD–860), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2567; or

David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Pharmacokinetics in Patients With Impaired Hepatic Function: Study Design, Data Analysis, and Impact on Dosing and Labeling.'' This document provides guidance on: (1) When pharmacokinetic studies in patients with hepatic impairments should be conducted; (2) the recommended design and conduct of studies to characterize the effects of impaired hepatic function on the pharmacokinetics of a drug; (3) inclusion criteria for patient populations to be studied; (4) analysis, interpretation, and reporting of the results of the studies; and (5) the description of study results in drug labeling.

In the **Federal Register** of December 7, 1999 (64 FR 68357), FDA published a notice announcing the availability of a draft version of this guidance. A number of comments were received in the docket for the 1999 draft guidance. After careful consideration of the comments, the draft guidance was revised. Although we made a number of clarifying edits and tried to make the guidance more user friendly, the only substantive change to the draft guidance was to correct the implication that certain drugs should be studied in patients with concurrent hepatic and renal impairment.

This level 1 final guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on pharmacokinetic studies in patients with impaired hepatic function. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13477 Filed 5–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Criteria for Determining Priorities Among Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 333A(b)(1) of the Public Health Service (PHS) Act, as amended by the Health Care Safety Net Amendments of 2002, 42 U.S.C. 254f–1(b)(1), the Secretary of HHS shall establish the criteria which he will use to make determinations under section 333A(a)(1)(A) of the health professional shortage areas (HPSAs) with the greatest shortages. This notice sets forth the current greatest shortage criteria for primary care,dental and mental health HPSAs, which will be used pending the adoption of new criteria through rulemaking.

EFFECTIVE DATE: May 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Andy Jordan, Acting Chief, Shortage Designation Branch, National Center for Health Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 8C–26, Rockville, Maryland 20857, (301–594–0816).

SUPPLEMENTARY INFORMATION: Section 332 of the PHS Act, 42 U.S.C. 254e, provides that the Secretary shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. The required regulations setting forth the criteria for designating HPSAs are codified at 42 CFR Part 5.

Section 333A(a)(1)(A) of the PHS Act requires that the Secretary give priority in assignment of NHSC personnel to entities serving HPSAs with the greatest health professional shortage. Section 333A(c) of the PHS Act requires that the Secretary establish criteria specifying the manner in which he determines HPSAs of greatest shortage and published in the **Federal Register**.

The Secretary is developing a new method for designating HPSAs and determining HPSAs of greatest shortage. A Notice of Proposed Rulemaking (NPRM), relating to primary care HPSAs, was initially published in 1998. Major revisions were made in response to the comments received, and the Secretary anticipates publishing a new NPRM this year. Subsequent to the adoption of a new rule relating to primary care HPSAs, the Secretary intends to propose new methods for designating dental care and mental health care HPSAs and to publish new criteria for determining HPSAs of greatest shortage for primary care, dental care and mental health care HPSAs. In the interim, to determine HPSAs of greatest shortage, the Secretary will continue to use the current criteria set forth in this notice.

Approach for Determining Greatest Shortages

1. Three factors (population-to-provider ratio, poverty rate, and travel distance/time to nearest accessible source of care) are applicable to all categories of HPSAs (primary care, dental and mental health).

2. Additional factors specifically related to each HPSA category are included (*e.g.*, infant mortality/low birth weight rates (IMR/LBW) for primary care; presence of fluoridated water for dental; ratios of the population under 18 and over 65 and the prevalence of alcohol or substance abuse for mental health).

3. A scale is developed for scoring each factor. The scale generally includes five scoring levels, and reflects different patient utilization patterns for primary care, dental and mental health services.

4. Relative weights for the various factors are established, based on the significance of the factors in determining a shortage.

5. Each HPSA is scored on each factor.

6. The factor scores are weighted and summed for each HPSA.

7. The total scores for each HPSA are ranked from highest to lowest for each HPSA category.

8. A level is selected annually to identify the boundary between the HPSAs of greatest shortage and all other HPSAs.

9. Those HPSAs with total scores equal to or greater than the selected boundary level within each category are identified as the HPSAs of greatest shortage.

Criteria for Determining Primary Care HPSAs of Greatest Shortage

Note: GE is defined as greater than or equal to.

1. Score for population-to-full-time-equivalent primary care physician (PCP) ratio:

Ratio > 10,000:1, or No PCPs and Population GE 2500 = 5 points
10,000:1 > Ratio GE 5,000:1, or No PCPs and Population GE 2000 = 4 points;
5,000:1 > Ratio GE 4,000:1, or No PCPs and Population GE 1500 = 3 points;
4,000:1 > Ratio GE 3,500:1, or No PCPs and Population GE 1000 = 2 points;
3,500:1 > Ratio > 3,000:1, or No PCPs and Population GE 500 = 1 point.

2. Score for percent of population with incomes below poverty level (P):

P GE 50% = 5 points;
50% > P GE 40% = 4 points;
40% > P GE 30% = 3 points;
30% > P GE 20% = 2 points;
20% > P GE 15% = 1 point;
P < 15% = 0 points.

3. Infant Health Index:

IMR GE 20 or LBW GE 13 = 5 points;
20>IMR>18 OR 13>LBW>11 = 4 points;
18>IMR>15 or 11>LBW>10 = 3 points;
15>IMR>12 or 10>LBW>9 = 2 points;
12>IMR>10 or 9>LBW>7 = 1 point;
IMR<10 or LBW<7 = 0 points.

4. Score for travel distance/time to nearest source of accessible care outside the HPSA:

Nearest Source of Care is defined as the closest location where the residents of the area or population that is designated have access to comprehensive primary care services.

Time GE 60 minutes or Distance GE 50 miles = 5 points;
60 min > Time GE 50 min or 50 mi > Dist GE 40 mi = 4 points;
50 min > Time GE 40 min or 40 mi > Dist GE 30 mi = 3 points;
40 min > Time GE 30 min or 30 mi > Dist GE 20 mi = 2 points;
30 min > Time GE 20 min or 20 mi > Dist GE 10 mi = 1 point;
Time < 20 min or Dist < 10 mi = 0 points.

Criteria for Determining Dental HPSAs of Greatest Shortage

1. Score for population-to-full-time-equivalent provider ratio:

Ratio GE 10,000:1, or no dentists and population GE 3,000 = 5 points;
10,000:1 > Ratio GE 8,000:1, or no dentists and population GE 2,500 = 4 points;
8,000:1 > Ratio GE 6,000:1, or no dentists and population GE 2,000 = 3 points;
6,000:1 > Ratio GE 5,000:1, or no dentists and population GE 1,500 = 2 points;
5,000:1 > Ratio GE 4,000:1, or no dentists and population GE 1,000 = 1 point.

2. Score for percent of population with incomes below poverty level (P):

P GE 50% = 5 points;
50% > P GE 40% = 4 points;
40% > P GE 30% = 3 points;
30% > P GE 20% = 2 points;
20% > P GE 15% = 1 point;
P < 15% = 0 points.

3. Score for travel distance/time to nearest source of accessible care outside the HPSA:

Nearest Source of Care is defined as the closest location where the residents of the area or population that is designated have access to dental care services.

Time GE 90 minutes or Distance GE 60 miles = 5 points;
90 min > Time GE 75 min or 60 mi > Dist GE 50 mi = 4 points;
75 min > Time GE 60 min or 50 mi > Dist GE 40 mi = 3 points;
60 min > Time GE 45 min or 40 mi > Dist GE 30 mi = 2 points;
45 min > Time GE 30 min or 30 mi > Dist GE 20 mi = 1 point;
Time < 30 min or Dist < 20 mi = 0 points.

4. Score for Fluoridation:

Fluoridated Water Available for ≥50% of Population = 0 points;
Fluoridated Water Available for <50% of Population = 1 point.

For primary care and dental care HPSAs, the population-to-practitioner ratio is double weighted, as it is a primary factor in the designation of HPSAs under section 332 of the PHS Act. The poverty rate is also doubled. The poverty rate is widely acknowledged in professional literature as a key measure of need for primary health services, and income levels have been shown to correlate directly with access to health care and with health status measures. This results in a maximum possible score of 26 points.

Criteria for Determining Mental Health HPSAs of Greatest Shortage

1. Score for population-to-full-time-equivalent provider ratio:

The reporting of the number of psychiatrists present is required in all mental health HPSA applications; the

reporting of other mental health professionals is optional. Other mental health professionals include: clinical psychologists, clinical social workers, marriage and family therapists, and psychiatric nurse specialists. Depending upon the data reported, the scales utilize a population-to-psychiatrist ratio and/or a population-to-core mental health provider ratio. (Core mental health providers include psychiatrists and other mental health professionals.) The table below defines the various provider to population ratios and related scores:

Psychiatrist ratio	Core mental health ratio	Score
GT 45,000:0 and	GT 4,500:0	8
	GT 4500:1 and LT 6000:1.	7
LT 20,000:1 and GT 15,000:1 and.	GT 6000:1 and LT <9,000:1.	6
LT 30,000:1 and GT 15,000:1 or.	GT 4,500:1 and LT 6,000:1.	5
LT 45,000:1 and GT 20,000:1 and.	GT 4,500:0 and LT 6,000:0.	4
GT 20,000:1 and	GT 6,000:1	3
GT 30,000:1	.....	2
	GT 9,000:1	1

2. Score for percent of population with incomes below poverty level (P)

P GE 50% = 5 points;
50% > P GE 40% = 4 points;
40% > P GE 30% = 3 points;
30% > P GE 20% = 2 points;
20% > P GE 15% = 1 point;
P < 15% = 0 points.

3. Score for travel distance/time to nearest source of accessible care outside the HPSA:

Nearest Source of Care is defined as the closest location where the residents of the area or population that is designated have access to mental health care services.

Time GE 60 minutes = 5 points;
<60 min and >50 minutes = 4 points;
<50 minutes and >40 minutes = 3 points;
<40 minutes and >30 minutes = 2 points;
<30 minutes and >20 minutes = 1 point.

4. Scores for Additional Factors

(a) Youth Ratio: Ratio of Children under 18 to Adults 18–64:

≥60% = 3 points;
<60 and >40 = 2 points;
<40 and >20 = 1 point.

(b) Elderly Ratio: Ratio of Adults over 65 to Adults 18–64

≥25% = 3 points;
<25 and >15 = 2 points;
<15 and >10 = 1 point.

(c) Substance Abuse prevalence: Area's rate is in worst quartile for nation/region/or state:

Yes = 1 point;
No = 0 points.

(d) Alcohol Abuse prevalence: Area's rate is in worst quartile for nation/region/or state:

Yes = 1 point;
No = 0 points.

Since a larger number of factors are considered in the mental health HPSA scoring methodology, there is no doubling of the weights. The possible points for the population to provider ratio, 8, is greater than for any of the other factors, in recognition of its primary importance as mentioned above. The maximum score is 26.

Facility HPSA Scores

All geographic and population group HPSAs are scored using the above methodologies. In general, public or nonprofit private facilities designated as HPSAs based on the provision of services to a geographic or population group HPSA receive the score of the HPSA they serve. The exception is for Federally Qualified Health Centers and Rural Health Centers which are automatically designated under the Health Care Safety Net Amendments of 2002. These facilities will be scored as an entity, using the same factors used for the designation of areas and populations described above, but applied to the entity itself. Designated facilities which serve interned populations (Federal and State correctional facilities and State/county mental hospitals) are designated based on internee/inpatient data that differs from the data used in geographic and population group HPSAs. Poverty rate and travel distance/time to nearest accessible source of care are not data reported or required under the facility HPSA designation criteria and, likewise, do not appear to be directly applicable in determining HPSA scores for these institutionalized populations.

Consequently, correctional facility/mental hospital HPSA scores are extrapolated from the degree-of-shortage (DOS) groups determined in the HPSA designation process. *See* 42 CFR part 5, Appendices A, B and C. The determination of DOS groups for these facilities is based primarily on internee/inpatient-to-provider ratios, which is similar to the first factor used for determining HPSAs of greatest shortage (population-to-provider ratio).

For all correctional facilities, the following scores apply: DOS group 1 = 21, DOS group 2 = 15, and DOS group 3 = 9. These were derived by dividing the HPSA score range (1–25) into quartiles, then setting the HPSA score at the midpoints, respectively. Correctional facilities only have DOS 1–3, so the midpoints for the top three quartiles were used. For State and county mental hospitals, this approach was adjusted due to the different distribution of mental health facilities among the DOS groups , with DOS group 1 = 20, DOS group 2 = 16, DOS group 3 = 12, and DOS group 4 = 8.

Paperwork Reduction Act: The criteria used to make determinations under section 333A(a)(1)(A) of the health professional shortage areas (HPSAs) with the greatest shortages described in this announcement will not involve data collection activities that fall under the purview of the Paperwork Reduction Act of 1995. If the methods for determining health professional shortage area with the greatest shortages fall under the purview of the Paper work Reduction Act, the Program will assist HRSA in seeking OMB clearance for proposed data collection activities.

Dated: May 22, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13478 Filed 5–29–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of 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 a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Child Health and Human Development Council.

Date: June 12–13, 2003.

Open: June 12, 2003, 9:45 a.m. to 5 p.m.

Agenda: The agenda includes a report by the Director, NICHD; a report by the Demographic and Behavioral Sciences Branch; and a presentation by the Director, NIH.

Place: National Institutes of Health, Building 31/C wing, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: June 13, 2003, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31/C wing, 31 Center Drive, Conference Room6, Bethesda, ED 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIGH, 9000 Rockville Pike USC 7510, Building 31, Room 2A03, Bethesda, ED 20892, (303) 496-1848.

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.

Information is also available on the Institute's/Center's Home page: *http://wow.niched.nigh.go/about/nachhd.ham,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Dos. 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, OHS)

Dated: May 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13502 Filed 5–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel Drug Discovery.

Date: June 19, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13503 Filed 5–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel Pagon P41.

Date: June 16, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M Rodrigues, PhD, MD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

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. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13501 Filed 5–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel GEMZAR.

Date: May 28, 2003.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: June 5–6, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Transcriptional Regulation of Liver Growth and Cancer.

Date: June 5, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Detection of Cervical Tumors.

Date: June 5, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779. *Riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 3 (10) SBIR.

Date: June 10–11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Disorders and Clinical Neuroscience 6.

Date: June 12–13, 2003.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jay Cinque, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.

Date: June 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Depression Studies and Panic Research Training.

Date: June 13, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS 3 (02) Member Conflict.

Date: June 17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.

Date: June 18–19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive MSC 7808, Room 4190, Bethesda, MD 20892, (301) 435–0903,

Name of Committee: Surgery, and Bioengineering Integrated Review Group, Surgery, Anesthesiology And Trauma Study Section.

Date: June 18–19, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gerald L Becker, MD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170,

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Development Neuroscience 6.

Date: June 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.

Date: June 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 7.

Date: June 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Prokaryotic and Eukaryotic Molecular Biology and Genetics.

Date: June 19–20, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Diet and Exercise Data Improvement.
Date: June 19, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Terrace, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Q: Microbial Genetics: Quorum.
Date: June 19–20, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th St., NW., Washington, DC 20037.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.
Date: June 19–20, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 4.
Date: June 19–20, 2003.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037
Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–3562, *raffertyc@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
Date: June 19–20, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 VISC (01), Studies of the Retina and Posterior Eye.
Date: June 19–20, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Physical Biochemistry Study Section.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *raknitg@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group Biochemistry Study Section.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–3565. *svedam@csr.nih.gov.*

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 3.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Epidemiology and Disease Control Subcommittee 1.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Scott Osborne, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Risk, Prevention and Health Behavior 1.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, *levinv@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Biophysical Chemistry Study Section.
Date: June 19–20, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 3, Language and Communication (LCOM).
Date: June 19–20, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 19–20, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel Personality, Social Psychology and Inter-Personal Processes.

Date: June 19–20, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street, NW., Parkview Conference Room, Washington, DC 20004.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel ALTX 1 Member Conflict.

Date: June 19, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1243, *begumn@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Metabolic Pathology Study Section.

Date: June 19–22, 2003.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham San Diego, Emerald Plaza, San Diego, CA 92101.

Contact Person: Angela Y. Ng, MBA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892–7804, (301) 435–1715, *nga@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: June 19–22, 2003.

Time: 6:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: US Grant Hotel, 326 Broadway, San Diego, CA 92101.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13500 Filed 5–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to Iowa to conduct a Targeted Capacity Expansion (TCE) of methamphetamine prevention intervention and/or infrastructure development.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is publishing this notice to provide information to the public concerning a planned single source grant in the amount of $400,000 in FY 2003, $400,000 in FY 2004, and $400,000 in FY 2005 for a project period of three years to the State of Iowa. This is not a formal request for applications. Assistance will be provided only to the State of Iowa based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Number: SP 03–008.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority/Justification: Section: 519E of the Public Health Service Act, as amended and subject to the availability of funds. Only the State of Iowa is eligible to apply. This single source program responds to the Congressional directive in the FY 2003 Appropriations Conference Report language to support methamphetamine prevention and treatment projects in Iowa. Methamphetamine use has been especially devastating in the Midwest. Iowa has seen increased arrests, treatment admissions, methamphetamine lab seizures and drug convictions related to methamphetamine use. According to the National Institute of Justice (NIJ) publication, *ADAM Preliminary 2001 Findings on Drug Use and Drug Markets,* Des Moines, Iowa, is highly ranked nationwide for methamphetamine use. The Des Moines Site Arrestee Drug Abuse Monitoring (ASAM) project has shown a steady increase in the number of arrestees testing positive for methamphetamine; the range is from 5.3% in the second quarter of 2000 to 38.5% in the third quarter of 2001. Females are beginning to test positive for methamphetamine at a consistently higher percentage than males. Treatment programs submitting data to the Iowa Department of Public Health Substance Abuse Reporting System (SARS) indicate that prior to 1994, methamphetamine was listed as the primary substance of abuse less than 3% of the time. Since 1999 SARS data has shown a steady increase from 8.3% to 12.3% in the primary use of methamphetamine. In 2002, 39% of the people in treatment programs that listed methamphetamine as their primary substance of abuse were under the age of 25. The Iowa Division of Narcotics Enforcement (DNE) has documented a 1,192% increase in the number of grams of methamphetamine seized from 1994 through 2002. State and local law enforcement responded to calls identifying over 19 methamphetamine laboratories per week last year and this trend continues in 2003. Methamphetamine use is increasing in the amount of drug used, more use by women and more use at younger ages. The use of methamphetamine is becoming epidemic in the Midwest as use spreads from the West to the East in the United States.

Iowa's trend information has demonstrated the need for a continuation of treatment and prevention projects. Outcomes from previous SAMHSA supported grants have proved successful; however, Iowa needs assistance to continue to expand and enhance services. This program provides a unique opportunity to assist Iowa to build on successful prevention and treatment models used in previous SAMHSA supported grants.

Contact for Additional Information: Pamela Roddy, Ph.D., Project Officer, Center for Substance Abuse Prevention,

5600 Fishers Lane/Rockwall II, Suite 1075, Rockville, MD 20857, (301) 443–1001, e-mail: *proddy@samsha.gov.*

Dated: May 22, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–13479 Filed 5–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to Iowa to expand substance abuse treatment capacity for methamphetamine abuse.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is publishing this notice to provide information to the public concerning a planned single source grant in the amount of $500,000 in FY 2003, $500,000 in FY 2004, and $500,000 in FY 2005 for a project period of three years to the State of Iowa. This is not a formal request for applications. Assistance will be provided only to the State of Iowa based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Number: TI 03–011.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority/Justification: Section: 509 of the Public Health Service Act, as amended and subject to the availability of funds. Only the State of Iowa is eligible to apply. This single source program responds to the Congressional directive in the FY 2003 Appropriations Conference Report language to support methamphetamine prevention and treatment projects in Iowa. Methamphetamine use has been especially devastating in the Midwest. Iowa has seen increased arrests, treatment admissions, methamphetamine lab seizures and drug convictions related to methamphetamine use. According to the National Institute of Justice (NIJ) publication, *ADAM Preliminary 2001 Findings on Drug Use and Drug Markets*, Des Moines, Iowa, is highly ranked nationwide for methamphetamine use. The Des Moines Site Arrestee Drug Abuse Monitoring (ASAM) project has shown a steady increase in the number of arrestees testing positive for methamphetamine; the range is from 5.3% in the second quarter of 2000 to 38.5% in the third quarter of 2001. Females are beginning to test positive for methamphetamine at a consistently higher percentage than males. Treatment programs submitting data to the Iowa Department of Public Health Substance Abuse Reporting System (SARS) indicate that prior to 1994, methamphetamine was listed as the primary substance of abuse less than 3% of the time. Since 1999 SARS data has shown a steady increase from 8.3% to 12.3% in the primary use of methamphetamine. In 2002, 39% of the people in treatment programs that listed methamphetamine as their primary substance of abuse were under the age of 25. The Iowa Division of Narcotics Enforcement (DNE) has documented a 1,192% increase in the number of grams of methamphetamine seized from 1994 through 2002. State and local law enforcement responded to calls identifying over 19 methamphetamine laboratories per week last year and this trend continues in 2003. Methamphetamine use is increasing in the amount of drug used, more use by women and more use at younger ages. The use of methamphetamine is becoming epidemic in the Midwest as use spreads from the West to the East in the United States.

Iowa's trend information has demonstrated the need for a continuation of treatment and prevention projects. Outcomes from previous SAMHSA supported grants have proved successful; however, Iowa needs assistance to continue to expand and enhance services. This program provides a unique opportunity to assist Iowa to build on successful prevention and treatment models used in previous SAMHSA supported grants.

Contact for Additional Information: Ms. Cheryl Gallagher, Public Health Advisor, Systems Improvement Branch, Division of Services Improvement, SAMHSA/Center for Substance Abuse Treatment, 5600 Fishers Lane/Rockwall II, Suite 740, Rockville, MD 20857, (301) 443–7259, E-Mail: *cgallagh@samsha.gov.*

Dated: May 22, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–13480 Filed 5–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2002–14134]

Port Pelican LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administrative, DOT.

ACTION: Draft environmental impact statement, notice of availability and request for public comments; notice of meeting.

SUMMARY: The U.S. Coast Guard and the Maritime Administration announce the availability of the draft environmental impact statement for the Port Pelican LLC Deepwater Port License Application. We request your input on this draft environmental impact statement, which covers the construction and operation of a liquefied natural gas deepwater port known as ''Port Pelican'' and associated anchorage on the Outer Continental Shelf in the Gulf of Mexico, approximately 36 miles south southwest of Freshwater City, Louisiana.

DATES: The draft environmental impact statement (EIS) will be available on May 30, 2003, and comments must reach the Coast Guard on or before July 15, 2003. A public meeting will be held on July 1, 2003, 3 p.m. to 7 p.m., in Lafayette, LA.

ADDRESSES: The draft EIS will be available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2002–14134 or by contacting the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**. The meeting location is: Lafayette Hilton Hotel, West Pinhook Road, Lafayette, LA 70503, (337) 235–6111.

Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–14134), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the draft EIS for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, DOT, telephone (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Authority: 33 U.S.C. 1504(f).

Request for Comments

We encourage you to submit comments on this draft EIS (A copy of the draft EIS is available as indicated under **ADDRESSES**). If you do so, please include your name and address, identify the docket number for this notice (USCG–2002–14134) and give the reasons for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under **ADDRESSES**, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail, and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period. Comments received during the draft EIS review period will be available in the public docket and addressed in the final EIS. A notice of availability of the final EIS will also be published in the **Federal Register**.

Public Meeting/Open House

The Coast Guard and the Maritime Administration will host an informational open house from 3 p.m. to 7 p.m. on Tuesday, July 1, 2003, at the Lafayette Hilton Hotel, West Pinhook Road, Lafayette, Louisiana. A public meeting will be held concurrently with the informational open house, and will commence at 5 p.m. We invite the public and representatives of interested agencies to attend and provide their views on the proposed action and the evaluation contained in the draft EIS (A copy of the draft EIS is available as indicated under **ADDRESSES**). If you plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**.

Proposed Action

The application plan calls for construction of the Port Pelican Deepwater Port and associated anchorage in an area situated in the Gulf of Mexico approximately 36 miles south southwest of Freshwater City, Louisiana, in Vermilion Block 140. Additional information on the application can be found online at *http://dms.dot.gov* under docket number USCG–2002–14134, or in the notice of application published in the **Federal Register** at 67 FR 79234 (Dec. 27, 2002).

The proposed project would deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas would then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines.

The project would consist of two concrete gravity based structure (GBS) units fixed to the seabed, which would include integral liquefied natural gas (LNG) storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing accommodations for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations.

A 42-inch diameter offshore Pelican Interconnector Pipeline (PIPL), 37 nautical miles in length, would be constructed as part of the project. The PIPL would transport gas from the terminal to a point near the Tiger Shoal Platform ''A'' where it would connect to the Henry-Floodway Gas Gathering System (HFGGS). The HFGGS would deliver the gas to the onshore U.S. gas pipeline network.

Alternatives

The draft EIS examines in detail an alternative location for siting of the project and a no-action alternative. The alternative site, approximately 30 miles east of Vermilion Block 140, would involve use of South Marsh Island Block 4.

Evaluation of the no-action alternative, defined as not approving the license application, provides a baseline for comparing the impacts associated with the proposed action and use of the alternative site.

Dated: May 22, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, Maritime Administration.

[FR Doc. 03–13418 Filed 5–23–03; 3:17 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–22]

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: May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, 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: May 22, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–13270 Filed 5–29–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Trinity River Restoration Program budget review, establishment of Committee bylaws, a presentation regarding public access, review of a request to the TAMWG to recommend that the Trinity River Restoration Program encourage the Bureau of Land Management to acquire a parcel of land at Gold Bar on the Trinity River as a long-term course sediment source for the Restoration Program, a Restoration Program presentation of the Rush Creek Delta Project, review of a letter from Humboldt County to the Secretary of the Interior regarding Klamath River Fishery Water Supply, and an Executive Director's report. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Thursday, June 19, 2003, and from 8 a.m. to 5 p.m. on Friday, June 20, 2003.

ADDRESSES: The meeting will be held at the Victorian Inn, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: May 21, 2003.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–13474 Filed 5–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Information Collection Submission to OMB for Renewal and Approval of New Forms Under Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that an information collection request was submitted to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs for review and renewal. We have also requested approval for new forms that will be mandatory October 2003.

DATES: Written comments must be received by June 30, 2003.

ADDRESSES: You may submit comments to the Desk Officer for Department of the Interior, by facsimile at (202) 395–5806 or you may e-mail her at *Ruth_Solomon@omb.gov.*

Send a copy of your comments to Lynn Forcia, Office of Economic Development, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 2412–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or additional copies of the information collection instructions and the November 27, 2002, **Federal Register** should be directed to Lynn Forcia, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS 2412–MIB, Washington, DC 20240; Telephone 202–219–5270. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection for A Reporting System for the Public Law 102–477 Demonstration Project needs renewal. The 60-day notice requesting comments on OMB Control Number 1076–0135, ''Public Law 102–477 Reporting,'' was published in the **Federal Register** on November 27, 2002 (67 FR 70963). We have held meetings with both tribal and Federal partners regarding the existing Public Law 102–477 tribal report forms. We have also shared the changes mandated by the government-wide employment and training OMB requirements with Federal partners and tribal representatives. Based upon our requests for input and recommendations, we are requesting two actions: (1) That tribes be able to use existing forms which will be gradually phased out as tribes are able to use new forms, but no later than September 30, 2003, and (2) we are requesting approval of the revised forms which will become effective October 1, 2003, at the latest. Tribes may adopt the new revised forms as they have made the necessary alterations to their computer programs and data collection forms so that they may adequately collect and accurately report the required data.

Abstract: The information collection is needed to document satisfactory compliance with statutory, regulatory and OMB requirements of the various integrated programs. Public Law 102–477 authorizes tribal governments to integrate Federally-funded employment, training and related services programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of the Interior, Department of Labor, and the Department of Health and Human Services. The Bureau of Indian Affairs is statutorily required to serve as the lead agency. Section 11 of this Act requires that the Secretary of the Interior make available a single universal report format which shall be used by a tribal government to report on integrated activities and expenditures undertaken. The Bureau of Indian Affairs shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services.

Method of Collection

Existing Forms: Currently, tribal governments voluntarily participating in Public Law 102–477 are required to annually complete two single page, one-sided report forms and one narrative report, which includes four pages of instructions. They replace 166 pages of instructions and applications

representing three different agencies and twelve different funded but related programs. We estimate a 95 percent reduction in reporting which is consistent with the Paperwork Reduction Act and goals of the National Performance Review. The statistical and narrative report will be used to demonstrate how well a plan was executed in comparison to proposed goals. The financial status report will be used to track cash flow, and will allow an analysis of activities versus expenditures and expenditures to approved budget. It is a slightly modified SF–269–A (short form). We are requesting approval of these existing forms for use through September 30, 2003.

Revised Forms: These forms have been developed incorporating comments from the Department of Health and Human Services and the Department of Labor which provide program funds to tribes for portions of Public Law 102–477. The revised forms have also incorporated many of the comments from tribal grantees and other interested parties.

The revised forms include a one page financial form which is a slightly modified SF–269–A (short form). The financial report also now adds one additional financial page at the request of the Department of Health and Human Services, Temporary Assistance for Needy Families (TANF) report. The form is accompanied by four pages of instructions. The additional form and instructions are only to be completed by those tribes receiving TANF funds under Public Law 102–477. A portion of the report is optional as requested by DHHS. Secondly, the revised forms includes a revised and expanded program statistical report.

These report forms and narrative are limited but should satisfy the Department of Health and Human Services, Department of Labor and the Department of the Interior. Both the existing and revised forms reduce the burden on tribal governments by consolidating data collection for employment, training, education, child care and related service programs. The reports are due annually. These forms have been developed within a partnership between tribes and representatives of all three Federal agencies to standardize terms and definitions, eliminate duplication and reduce frequency of collection.

Action: Renewal of existing forms, and delayed approval of revised forms for FY 2004.

Collection: OMB Control # 1076–0135, A Reporting System for Public Law 102–477 Demonstration Project.

Respondents: Tribes participating in Public Law 102–477 will report annually. Currently there are 49 grantees representing 240 tribes participating in the program.

Burden: The hourly burden for present forms is 10 hours per respondent; 10 hours × 49 equals 490 annual burden hours. This is an increase of 12 more tribes in the program and represents an adjustment of 120 hours. Because we will use the estimate for the new forms which will require 16 hours per year to complete for each grantee, we are adding 294 hours as a program change in burden hours. This represents an overall increase in burden hours of 414 hours.

Public Comments and Responses

All comments were considered in preparing BIA's response. The comments received relating to the information collection and OMB's responses are summarized below:

As we stated in the **Federal Register** 60 day proposed collection the Department of Health and Human Services (DHHS) wanted an additional report added to the financial report, including four pages of instructions. A portion of the financial report is optional for tribes to complete.

DHHS has also requested additional data on the program statistical report to include the type of child care providers being used. We are also proposing to add the requested OMB required government-wide common performance measures for all Federal employment and training programs to the program statistical report which includes: Attainment of a job, attainment of a certificate or degree by program participants, earnings gains, and sufficient information to determine total program cost per placement in a job for adults. We have also added data collection for gains in literacy and numeracy for the youth program. Based upon our experience implementing Public Law 102–477, the Bureau of Indian Affairs proposes to expand and clarify the narrative instructions as further guidance to tribes in the completion of the narrative. Unmet needs, barriers to employment being faced and the necessity of reporting data on performance standards is provided.

The Public Law 102–477 revised forms and procedures have been controversial since November of 2000. We have attempted to incorporate many of the comments received and believe the proposed document reflects negotiations among all parties involved.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period. Written comments should be sent as directed in the **ADDRESSES** section.

You are reminded that an agency may not request or sponsor a collection of information unless OMB has approved the collection; you are not required to answer a collection of information that is not approved, and you will not be harmed by your refusal.

Dated: April 17, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–13573 Filed 5–29–03; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mohegan Tribe of Indians of Connecticut Liquor Control Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Mohegan Tribe of Indians of Connecticut Liquor Control Code. The Code regulates and controls the possession, sale and consumption of liquor within the boundaries of the Mohegan Indian Reservation, in conformity with the laws of the State of Connecticut where applicable and necessary. Although the Code was adopted on April 11, 2000, it does not become effective until approved by the Department of the Interior and published in the **Federal Register** because failure to comply with the Code may result in criminal charges.

EFFECTIVE DATE: This Code is effective on May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Duane Bird Bear, Office of Tribal Services, 1849 C Street, NW., MS 320–SIB, Washington, DC 20240–4001; Telephone (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Mohegan Tribe of Indians of Connecticut Liquor Code, Resolution No. 2000–05, was duly adopted by the

Mohegan Tribal Council on April 11, 2000. The Mohegan Tribe of Indians of Connecticut enacted this ordinance for the purpose of regulating and controlling the possession and sale of liquor on the lands of the Mohegan Tribe. The ordinance governing liquor possession and sale on the lands of the Mohegan Tribe will increase the ability of the tribal government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that Resolution No. 2000–05, the Mohegan Tribe of Indians of Connecticut Liquor Control Code, was duly adopted by the Mohegan Tribe of Indians on April 11, 2000.

Dated: May 16, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The Mohegan Tribe of Indians of Connecticut Liquor Control Code, Ordinance No. 2000–05, reads as follows:

The Mohegan Tribe of Indians of Connecticut Liquor Control Code

Section I. Title

This Code shall be known as ''The Mohegan Tribe Liquor Control Code.''

Section II. Purpose and Authority

The purpose of this Code is to regulate and control the possession, sale and consumption of liquor within the boundaries of the Mohegan Indian Reservation. This Code is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161). Authority for enactment is derived from Article IX, Section 2 (l), (n), and (p) of the Constitution of The Mohegan Tribe. The enactment of a tribal code governing liquor sales on the Mohegan Indian Reservation and other lands subject to the Tribe's jurisdiction will enhance the ability of the tribal government to control possession, sale and consumption of liquor within the boundaries of the Reservation. This Code is enacted in conjunction with the laws of the State of Connecticut applicable to the sale or distribution of alcoholic beverages, which apply to the service of alcoholic beverages within any gaming facility of the Tribe by virtue of the State of Connecticut—Mohegan Tribe Gaming Compact.

Section III. Definitions

The following words and phrases shall have the following meanings:

a. *Alcohol* means the product of distillation of any fermented liquid, rectified either once or more often, whatever may be the origin thereof, and includes synthetic ethyl alcohol which is considered nonpotable.

b. *Alcoholic liquor* or *alcoholic beverage* includes the four varieties of liquor: alcohol, beer, spirits, and wine—and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being for beverage purposes. Any liquid or solid containing more than one of the four varieties so defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the following order: Alcohol, spirits, wine and beer, except as provided in the definition of ''wine'' below. The provisions of this chapter shall not apply to any liquid or solid containing less than one-half of 1 percent of alcohol by volume.

c. *Bar* means any establishment with special space and accommodations for sale by the glass for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

d. *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and hops in drinking water.

e. *Commission* means the Mohegan Tribal Gaming Commission.

f. *Malt Liquor* means beer, ale, stout, and porter.

g. *MTGA* means the Mohegan Tribal Gaming Authority.

h. *Reservation* means all lands taken into trust for the Mohegan Tribe pursuant to the Mohegan Land Claims Settlement Act, 25 U.S.C. 1775, and any additional lands added to the Mohegan Reservation pursuant to any other applicable federal law.

i. *Sale* or *Sell* means the transfer, exchange or barter, by any means whatsoever, for a consideration, by any person, association, partnership, or corporation, of liquor or beer products.

j. *Spirits* mean any beverage that contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whiskey and gin.

k. *State* means the State of Connecticut.

l. *Tribe* means The Mohegan Tribe of Indians of Connecticut.

m. *Tribal Council* means the Tribal Council of The Mohegan Tribe of Indians of Connecticut.

n. *Wholesale Price* means the established price for which liquor and beer products are sold for resale on the Reservation by the manufacturers or distributor, exclusive of any discount or other reduction.

o. *Wine* means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry and champagne.

Section IV. Powers of Enforcement

a. The Mohegan Tribal Gaming Commission is hereby delegated primary regulatory authority over the subject matter of this Code. The Commission shall have the following powers and duties:

1. To establish, publish and enforce rules and regulations governing the sale, manufacture, and distribution of liquor on the Reservation. Such rules and regulations shall be at least as stringent as the rules and regulations of the State of Connecticut and shall be approved by the Tribal Council prior to taking effect;

2. To employ managers, accountants, security personnel, inspectors, and other such persons as may be reasonably necessary to allow the Commission to perform its functions;

3. To issue licenses permitting the manufacture, sale and distribution of liquor on the Reservation;

4. To hold hearings on violations of this Code or for the issuance or revocation of licenses hereunder;

5. To bring suit to enforce this Code as necessary;

6. To determine penalties for violations of this Code;

7. To make such reports as may be required;

8. To collect fees levied or set in relation to this Code and keep accurate records, books and accounts; and

9. To exercise such other powers as is necessary and appropriate to fulfill the purposes of this Code.

b. The Commission shall have the authority to authorize the sale of liquor only on those areas of the Reservation that have been approved by the Tribal Council.

Section V. Limitation of Powers

In the exercise of its powers and duties under this Code, the Commission and its individual members shall not accept gratuity, compensation, or other things of value from any liquor producer, wholesaler, retailer, or distributor or from any liquor licensee.

Section VI. Inspection Rights

The premises upon which liquor is sold or distributed shall be open to inspection by the Commission during

all hours of operation for the purposes of ascertaining compliance with this Code.

Section VII. Sales of Liquor

a. *Tribal Liquor License Required.* No sale of any alcoholic beverage shall be made on the Reservation without a tribal liquor license.

b. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash or cash equivalent basis, including the use of ATM cards, debit cards, Mohegan Sun Players Club Cards, checks or major credit cards.

c. *Sales for Personal Consumption.* All sales shall be for the personal use and consumption by the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Code who purchases an alcoholic beverage within the boundaries of the Reservation and sells it, whether in the original container or not, shall be guilty of a violation of this Code and shall be subject to a fine under this Code.

Section VIII. Licensing

a. *Tribal Liquor License Requirements.* No license shall be issued under this Code except upon a sworn application filed with the Commission containing a full and complete showing of the following:

1. Satisfactory proof that the applicant is duly licensed by the State to sell alcoholic beverages.

2. Satisfactory completion of a background investigation including but not limited to a determination that the applicant is of good character and reputation and that the applicant is financially responsible.

3. The description and location of the premises in which the alcoholic beverages are to be sold and proof that the applicant is entitled to use such premises for such purposes for the duration of the time period of the license.

4. Agreement by the applicant to accept and abide by all conditions of the license.

5. Payment of a fee established by the Commission.

6. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State.

Section IX. Processing Applications for Tribal Liquor License

The Commission will consider the merits of applications for liquor licenses based on the following factors:

(1) whether the requirements of Section VIII have been met; and

(2) whether granting the license is in the best interests of the Tribe.

No member of the Commission shall be a part of the decision making process if an application is submitted by a Commission member or any person in the immediate family of a Commission member.

Section X. Temporary Permits

The Commission may grant a temporary permit for the sale of liquor, in any form, for a period not to exceed 3 days to any persons applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in Section XI of this Code shall be observed by the permittee. Each permit issued shall specify the types of alcoholic beverages to be sold, the time, date and location permitted. A fee, as set by the Commission, will be assessed on temporary permits.

Section XI. Conditions of the Tribal License

a. Any license issued under this Code shall be subject to such reasonable conditions, as the Commission shall fix, including, but not limited to the following:

1. The license shall be for a term not to exceed 2 years.

2. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

3. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during regular business hours.

4. Alcoholic beverages shall be sold, served, disposed of, delivered or given to any person, and consumed on the licensed premises in conformity with the hours and days prescribed by the laws of the State, and in accordance with the hours fixed by the Commission.

5. All acts and transactions under authority of a liquor license shall be in conformity with State and federal law, and shall be in accordance with this Code and any license issued pursuant to this Code.

6. No person under the age permitted under the laws of the State (21 years) shall be sold, served, delivered, given, or allowed to consume alcoholic beverages.

7. There shall be no discrimination in the operations under the license by reason of race, color, or creed.

Section XII. License Not a Property Right

Notwithstanding any other provision of this Code, a liquor license is a mere permit for a fixed duration of time. A liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a liquor license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

Section XIII. Assignment or Transfer

No license issued under this Code shall be assigned or transferred without the written approval of the Commission expressed in a formal resolution.

Section XIV. Rules, Regulations, and Enforcement

a. *Sale or possession with intent to sell without a permit.* Any person who shall sell or offer for sale or distribute or transport in any manner, any liquor in violation of this Code, or who shall operate or shall have liquor in his possession with intent to sell or distribute without a license or permit shall be guilty of a violation of this Code.

b. *Purchases from other than licensed or allowed facilities.* Any person who, within the boundaries of the Reservation, buys liquor from any person other than a licensed facility shall be guilty of a violation of this Liquor Code.

c. *Consumption or possession of Liquor by persons under 21 years of age.* No person under the age of 21 years shall consume, acquire or have in his or her possession any liquor. No person shall permit any other person under the age of 21 years to consume liquor on his premises or any premises under his control except in those situations set out in this Section. Any person violating this Section shall be guilty of a separate violation of this Code for each and every alcoholic beverage.

d. *Sales of Liquor to persons under 21 years of age.* Any person who shall sell or provide liquor to any person under the age of 21 years shall be guilty of a violation of this Code for every sale or drink provided.

e. *Transfer of identification to a minor.* Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a

requirement of finding a violation of this Code.

f. *Use of False or Altered Identification.* Any person who attempts to purchase an alcoholic beverage through the use of a false or altered identification shall be guilty of violating this Code.

g. *Acceptable Identification.* Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military ID; (3) a passport; or (4) a Mohegan tribal identification card or other recognized tribal identification card.

h. *Violations of this Liquor Code.* Any person guilty of a violation of this Code shall be liable to pay the Tribe a civil fine not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this Code. In addition to any fine so imposed, any license or permit issued hereunder may be suspended or canceled by the Commission for the violation of any of the provisions of this Code, or of the license or permit, upon hearing before the Commission. The decision of the Commission shall be final and no appeal therefrom shall be allowed. The Commission shall grant all persons in any hearing regarding violations, fine, or license suspensions under this Code all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1302, *et seq.* Notice of a Commission hearing regarding an alleged violation of this Code shall be given to the affected individual(s) or entity(ies) by certified mail at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with the Commission retaining proof of service. The notice will set out the rights of the alleged violator, including but not limited to the right to an attorney to represent the alleged violator, the right to speak and to present witnesses and to cross-examine any witnesses against them.

i. *Possession of Liquor Contrary to this Liquor Code.* Beverages containing alcoholic liquor which are possessed contrary to the terms of this Code are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Commission to enforce this Section shall have the authority to, and shall, seize all contraband.

j. *Disposition of Seized Contraband.* Any officer seizing contraband shall preserve the contraband in accordance with applicable Tribal and State law. Upon being found in violation of this Code by the Commission, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Section XV. Profits

a. *Disposition of Proceeds.* The gross proceeds collected by the Commission from licensing shall be distributed as follows:

1. For the payment of all necessary personnel, administrative costs, and legal fees for the administration of the provisions of this Code.

2. The remainder shall be turned over to the account of the Mohegan Tribe of Indians of Connecticut.

Section XVI. Severability

If a court of competent jurisdiction invalidates any part of this Code, all valid parts that are severable from the invalid part shall remain in effect. If a part of this Code is invalid in one or more of its applications, that part shall remain in effect in all valid applications that are severable from the invalid applications.

Section XVII. Sovereign Immunity

Nothing contained in this Code is intended to nor does in any way limit, alter, restrict, or waive the Tribe's sovereign immunity.

Section XVIII. Effective Date

The Mohegan Tribe hereby approves The Mohegan Tribe of Indians of Connecticut Liquor Control Code. Dated the 11th day of April 2000 at Uncasville, Connecticut.

[FR Doc. 03–13472 Filed 5–29–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–02–1610–JP–064B]

Notice of Availability of a Final Environmental Impact Statement and Associated Amendment to the California Desert Conservation Area Plan and Final Recreation Area Management Plan for the Imperial Sand Dunes Recreation Area

AGENCY: Department of Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of availability of a Final Environmental Impact Statement (FEIS) and associated Amendment to the California Desert Conservation Area Plan (CDCA) and Final Recreation Area Management Plan (FRAMP) for the Imperial Sand Dunes Recreation Area.

DATES: Written protests on the FEIS will be accepted if postmarked within 30 calendar days from the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing protests are contained in the Final Environmental Impact Statement document cover sheet just inside the front cover, and are included below under **SUPPLEMENTARY INFORMATION.**

SUMMARY: The final RAMP provides direction and guidance for the management of public lands and resources of the ISDRA, including multiple use goals and ecosystem management objectives, management prescriptions in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, management direction specific to discrete areas within the ISDRA, and monitoring and evaluation requirements.

ADDRESSES: Copies of the document are being mailed to those who request it. The document is available for review online at *http://www.ca.blm.gov/elcentro* and is also available in hard copy or CD–Rom at the following addresses and telephone numbers: Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243. (760) 337–4400.

FOR FURTHER INFORMATION CONTACT: Lynnette Elfer, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4420.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published the Notice of Availability of the Imperial Sand Dunes Recreation Area Management Plan Draft Environmental Impact Statement (DEIS) in the **Federal Register** on March 29, 2002. The public review period on the DEIS began March 29, 2002 and ended June 28, 2002.

Following are the instructions from the 43 Code of Federal Regulations 1610.5–2 for filing protests. (a) Any person who participates in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of

the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

Mailing address for filing a protest:

Regular mail: Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight mail; U.S. Department of the Interior, Director, Bureau of Land Management, Protest Coordinator (WO–210), 1620 ''L'' Street, NW., Rm 1075, Washington, DC 20036.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 03–13191 Filed 5–29–03; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–015]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: June 5, 2003 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. Nos. 731–TA–1015–1016 (Final) (Polyvinyl Alcohol from Germany and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 18, 2003.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: May 28, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13695 Filed 5–28–03; 2:10 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America* v. *The Town of Erie, Colorado, et al.,* Case No. 03–M–0890 (OES) (D. Colo.), was lodged with the United States District Court for the District of Colorado on May 16, 2003. This proposed Consent Decree concerns a complaint filed by the United States of America against the Town of Erie, Colorado, Grimm Construction Company, Inc., Bemas Construction, Inc. and the State of Colorado, pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Town of Erie, Colorado, Grimm Construction Company, Inc., and Bemas Construction, Inc. for the discharge of pollutants into waters of the United States in Boulder County, Colorado without authorization by the United States Department of the Army, in violation of Clean Water Act section 301(a), 33 U.S.C. 1311(a).

The proposed Consent Decree requires the Town of Erie to provide for the performance of wetlands mitigation work described in the consent decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Alan D. Greenberg, U.S. Department of Justice, 999 18th Street, Suite 945, Denver, CO 80202 and refer to *United States of America* v. *The Town of Erie, Colorado, et al.,* DJ #90–5–1–4–16110.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 03–13475 Filed 5–29–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Lead-Based Paint Hazard Act

Notice is hereby given that on May 8, 2003, a proposed consent decree in *United States* v. *SK Management Co.,* Civil Action No. 03–3225 RMT (RCx), and a proposed consent decree in *United States* v. *Westside Rehab Corp., et al.,* Civil Action No. 03–3226 JFW (SHx), were lodged with the United States District Court for the Central District of California.

The consent decrees settle claims against management agents and owners of several residential apartment buildings principally in southern California, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in each of its complaints that the defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the *Westside* consent decree, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, and to perform lead-based paint abatement. In addition, the Westside defendants will pay a penalty of $17,500 to the United States and spend $35,000 toward research on the health impacts of lead in the community, particularly children. Under the *SK Management* decree, the defendant has agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, and to perform lead-based paint abatement. In

addition, the SK defendant will pay a penalty of $10,500 to the United States and will spend $25,000 toward services to address the hazards arising from lead-based paint, including services such as blood-lead screenings, clinical consultations, medical surveillance and risk communication, and educational outreach.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Westside Rehab Corp., et al.,* D.J. #90–5–1–1–07223, or *United States* v. *SK Management Co.,* D.J. #90–5–1–1–07223/2.

The proposed consent decrees may be examined at the Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, attention: Tara Jordan, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785, ext. 157; at the office of the United States Attorney for the Central District of California, Federal Building Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the consent decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs), payable to the U.S. Treasury for the consent decree in *United States* v. *Westside Rehab Corp., et al.,* D.J. #90–5–1–1–07223, and $8.25 (25 cents per page reproduction costs), payable to the U.S. Treasury, for the consent decree in *United States* v. *SK Management Co.,* D.J. #90–5–1–1–07223/2.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–13476 Filed 5–29–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Revision of a currently approved collection; application for restoration of explosive privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comment especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Explosives Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. ATF F 5400.29 is required in order to determine whether or not explosive privileges may be restored. It is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest.

(5) *An estimate of the total number of respondent and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 23, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–13530 Filed 5–29–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of information collection under review: Revision of a currently approved collection; Hate Crime Incident Report and Quarterly Hate Crime Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 53, page 13324 on March 19, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 30, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Types of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Hate Crime Incident Report and Quarterly Hate Crime Report.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Forms 1–699 and 1–700; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Local and State Law Enforcement Agencies. These reports will gather information necessary to monitor the bias motivation of selected criminal offense. The resulting data are published annually.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are approximately 16,971 law enforcement agency respondents at 0.167 (10 minutes) hours per report.

(6) An estimate of the total public burden (in hours) associated with both collections: There are approximately 11,882 hours annual burden associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 23, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–13531 Filed 5–29–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail : *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Type of Review: Extension of a currently approved collection.

Title: 1,3-Butadiene.

OMB Number: 1218–0170.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping, Reporting, and Third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 115.

Information Collection Requirement	Annual Responses	Average Response Time (Hours)	Annual Burden Hours
(A) Exposure Monitoring			
1. Initial Monitoring	0	0.00	0
2. Periodic Monitoring	400	0.17	68
3. Additional Monitoring	40	0.17	7
4. Notification of Results			
a. Initial Notification	0	0.00	0
b. Periodic Notification	7	0.08	1
c. Additional Notification	5	0.08	1
d. Notification of Corrective Action	0	0.00	0
(B) Written Compliance Plan	0	0.00	0
(C) Exposure-Goal Program	7	1.00	7
(D) Respirator Program			
1. Filter Element Labeling	952	0.004	4
2. Respirator Fit Testing	0	0.00	0
(E) Emergency Situation Plan	0	0.00	0
(F) Medical Surveillance			
1. Periodic Examination			
a. Medical Examination	142	1.50	213
b. Annual Health Questionnaire and Compete Blood Count	426	0.50	213
2. Emergency Examinations	58	2.00	116
3. Additional Examinations	43	2.00	86
4. Information Provided to Physicians or Other Licensed Health-Care Professionals	527	0.25	132
(G) Employee Information and Training (Record of Program Content)	0	0.00	0
(H) Record keeping			
1. Objective Data	140	0.08	11
2. Exposure Monitoring			
a. Periodic Monitoring	400	0.08	32
b. Additional Monitoring	40	0.08	3
3 Respirator Fit-Testing Records	0	0.00	0
4. Medical Examinations	527	0.08	42
5. Employee Access	190	0.08	15
6. Federal Records	1	0.08	1
7. Transfer of Records	3	1.00	3
TOTAL:	**3,908**	//////////////////	**955**

Description: The 1,3-Butadiene Standard (29 CFR 1910.1051) requires employers to monitor employee exposure to 1,3-Butadiene; develop and maintain compliance and exposure-goal programs if employee exposures to 1,3-Butadiene are above the Standard's permissible exposure limits or action level; label respirator filter elements to indicate the date and time it is first installed on the respirator; establish medical surveillance programs to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to 1,3-Butadiene.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–13525 Filed 5–29–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 (this is not a toll-free number) on e-mail: *King.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Officer for the Mine Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electric, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Identification of Independent Contractors.

OMB Number: 1219–0043.

Frequency: On occasion.

Affective Public: Business or other for-profit.

Type of mine/Type of response	Annual responses	Average response time (hours)	Annual burden hours
Metal and Nonmetal:			
Voluntary application	1,167	0.13	152
Result of violation	197	0.07	14
Coal:			
Voluntary application	820	0.13	107
Result of violation	45	0.07	3
Total	2,229		275

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $655.

Description: 30 CFR 45.3 provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for the service of documents upon the contractor.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–13526 Filed 5–29–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the Law. WIA defines the term ''Low Income Individual'' as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2003 and references the current 2003 Health and Human Services (HHS) ''Poverty Guidelines.''

EFFECTIVE DATE: This notice is effective on May 30, 2003.

ADDRESSES: Send written comments to: Mr. Haskel Lowery, Employment and Training Administration, Department of Labor, Room N–4464, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Haskel Lowery, Telephone 202–693–3608; Fax 202–693–3532 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 ''to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.''

The LLSIL is used for several purposes under WIA: Specifically, WIA Section 101(25) defines the term ''low income individual'' for eligibility purposes; and sections 127(b)(2)(C) and 132(b)(1)(IV) define the terms ''disadvantaged adult'' and ''disadvantaged youth'' in terms of the poverty line or LLSIL for purpose of State formula allotments. The Governor and state/local Workforce Investment Boards use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services, and for the Work Opportunity Tax Credit (WOTC), reauthorized until 2004. We encourage the Governors and state/local Workforce Investment Boards to consult WIA and its Regulations and Preamble at 20 CFR parts 652, 660–671 (published at 65 FR 49294 (Aug. 11,

2000)) *et al.,* for more specific guidance in applying the LLSIL to program requirements. The HHS published the annual 2003 update of the poverty-level guidelines in the **Federal Register** at 68 FR 6456 (Feb. 7, 2003). The HHS 2003 Poverty guidelines may also be found on the Internet at: *http://www.aoa.gov/network/2003/2003povguidetable.html.*

The Employment and Training Administration (ETA) plans to have the 2003 LLSIL available on its Web site at: *http://wdsc.doleta.gov/llsil/llsil2003.asp.*

WIA Section 101(24) defines the LLSIL as ''that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary of Labor in the Fall of 1981.

The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently BLS provides data to ETA, from which it develops the LLSIL tables.

The ETA published the 2002 updates to the LLSIL in the **Federal Register** of April 8, 2002, at 67 FR 16961. This notice again updates the LLSIL to reflect cost of living increases for 2002, by applying the percentage change in the December 2002 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 2001, CPI–U, to each of the April 8, 2002 LLSIL figures. Those updated figures for a family-of-four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas.

Figures in all of the accompanying tables are rounded up to the nearest ten. Since ''low income individual, ''disadvantaged adult, ''and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25) (B), 127(b)(2)(C) and 132(b)(1)(B)(v)(IV), respectively, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

Midwest

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Micronesia
Mississippi
North Carolina
Tennessee
Texas
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the year 2003 figures were updated from the April 8, 2002, ''State Index'' based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on semiannual CPI-U changes for a 12-month period ending in December 2002. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Table 3 below.

Table 4 below lists each of the various figures at 70 percent of the updated 2003 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency under WIA Section 134d(3)(A)(ii), as noted at 20 CFR 663.230.

Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures: for Northeast metropolitan, for Northeast nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110 and 661.120, a State's policies and measures for the workforce investment system will be accepted by DOL to the extent that they are consistent with the WIA and the WIA regulations and DOL guidance.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI-U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under the

WIA as defined in the law and regulations.

Signed at Washington, DC, this 22nd day of May 2003.

Lorenzo D. Harrison,

Administrator, Office of Youth Services.

BILLING CODE 4510–30–P

Table 1: Lower Living Standard Income Level (for a family of four persons) by Region[1]

Region[2]	2003 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	$31,750	$22,230
Non-Metro[3]	$30,870	$21,610
Midwest		
Metro	$29,220	$20,450
Non-Metro	$27,520	$19,270
South		
Metro	$27,580	$19,310
Non-Metro	$26,100	$18,270
West		
Metro	$31,650	$22,150
Non-Metro[4]	$30,550	$21,390

[1]For ease of use, these figures have been rounded to the next highest ten dollars.

[2]Metropolitan area measures were calculated from the weighted average CPI-Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-Us for city size class D.

[3]Nonmetropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size Class D.

[4]Non-metropolitan area percent changes for the West region are unpublished data.

Table 2: Lower Living Standard Income Level (for a family of four persons) -- Alaska, Hawaii and Guam[1]

Region	2003 Adjusted LLSIL	70 percent LLSIL
Alaska		
Metro	$38,750	$27,130
Non-Metro[2]	$38,350	$26,850
Hawaii, Guam		
Metro	$39,360	$27,560
NonMetro[2]	$40,950	$28,670

[1]Rounded to next highest ten dollars.

[2]Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-Us for city size Class D in the Western Region.

Table 3: Lower Living Standard Income Level (for a family of four persons) 23 MSAs[1]

Metropolitan Statistical Areas (MSAs)	2003 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$38,750	$27,130
Atlanta, GA	$27,890	$19,520
Boston--Brockton--Nashua, MA/NH/ME/CT	$35,060	$24,540
Chicago--Gary--Kenosha, IL/IN/WI	$30,790	$21,550
Cincinnati--Hamilton, OH/KY/IN	$29,290	$20,500
Cleveland--Akron, OH	$30,000	$21,000
Dallas--Ft. Worth, TX	$26,850	$18,800
Denver--Boulder--Greeley, CO	$31,630	$22,150
Detroit--Ann Arbor--Flint, MI	$28,970	$20,280
Honolulu, HI	$39,360	$27,560
Houston--Galveston--Brazoria, TX	$25,480	$17,840
Kansas City, MO/KS	$28,520	$19,970
Los Angeles--Riverside--Orange County, CA	$32,210	$22,550
Milwaukee--Racine, WI	$29,270	$20,490
Minneapolis--St. Paul, MN/WI	$29,540	$20,680
New York--Northern NJ--Long Island, NY/NJ/CT/PA	$33,210	$23,250
Philadelphia--Wilmington--Atlantic City, PA/NJ/DE/MD	$30,780	$21,540
Pittsburgh, PA	$29,350	$20,550
St. Louis, MO/IL	$27,670	$19,370
San Diego, CA	$34,820	$24,380
San Francisco--Oakland--San Jose, CA	$34,440	$24,110
Seattle--Tacoma--Bremerton, WA	$34,920	$24,450
Washington--Baltimore, DC/MD/VA/WV[2]	$33,610	$23,530

[1]Rounded to next highest ten dollars.

[2] Baltimore and Washington are now calculated as a single metropolitan statistical area.

Table 4 - Seventy Percent of Updated 2003 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is indicated in parentheses. Individuals from these size families may consult the 2003 HHS poverty guidelines found in the Federal Register, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458 (on the Internet at http://www.aoa.gov/network/2003/2003povguidetable.html) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
($6,430)	($10,530)	($14,460)	($17,840)	($21,060)	($24,620)
($6,580)	($10,780)	($14,800)	($18,270)	$21,560	$25,220
($6,770)	($11,100)	($15,230)	$18,800	$22,190	$25,950
($6,940)	($11,370)	$15,610	$19,270	$22,740	$26,600
($6,960)	($11,400)	$15,650	$19,310	$22,790	$26,650
($6,980)	($11,430)	$15,690	$19,370	$22,860	$26,740
($7,030)	($11,520)	$15,820	$19,520	$23,040	$26,940
($7,190)	($11,790)	$16,180	$19,970	$23,570	$27,560
($7,310)	($11,970)	$16,430	$20,280	$23,940	$27,990
($7,370)	($12,070)	$16,570	$20,450	$24,140	$28,230
($7,380)	($12,090)	$16,600	$20,490	$24,180	$28,280
($7,380)	($12,100)	$16,610	$20,500	$24,190	$28,290
($7,400)	$12,130	$16,650	$20,550	$24,250	$28,360
($7,450)	$12,210	$16,760	$20,680	$24,410	$28,540
($7,560)	$12,390	$17,010	$21,000	$24,780	$28,980
($7,710)	$12,630	$17,330	$21,390	$25,250	$29,520
($7,760)	$12,710	$17,450	$21,540	$25,420	$29,730
($7,760)	$12,720	$17,460	$21,550	$25,430	$29,740
($7,780)	$12,750	$17,510	$21,610	$25,500	$29,830
($7,980)	$13,070	$17,950	$22,150	$26,140	$30,570
($7,980)	$13,070	$17,950	$22,150	$26,140	$30,570
($8,010)	$13,120	$18,010	$22,230	$26,240	$30,680
($8,120)	$13,310	$18,270	$22,550	$26,610	$31,120
($8,370)	$13,720	$18,840	$23,250	$27,440	$32,090
($8,480)	$13,890	$19,060	$23,530	$27,770	$32,480
($8,680)	$14,230	$19,530	$24,110	$28,450	$33,280
($8,780)	$14,390	$19,750	$24,380	$28,770	$33,650
($8,810)	$14,430	$19,810	$24,450	$28,860	$33,750
($8,840)	$14,480	$19,880	$24,540	$28,960	$33,870
$9,670	$15,850	$21,750	$26,850	$31,690	$37,060
$9,770	$16,010	$21,980	$27,130	$32,020	$37,440
$9,930	$16,270	$22,330	$27,560	$32,530	$38,040
$10,330	$16,920	$23,230	$28,670	$33,840	$39,570

Table 5 - Updated 2003 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2003 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
$9,180	$15,040	$20,640	$25,480	$30,070	$35,170
$9,400	$15,400	$21,150	$26,100	$30,800	$36,020
$9,670	$15,850	$21,750	$26,850	$31,690	$37,060
$9,910	$16,240	$22,300	$27,520	$32,480	$37,980
$9,930	$16,280	$22,340	$27,580	$32,550	$38,070
$9,970	$16,330	$22,420	$27,670	$32,660	$38,190
$10,050	$16,460	$22,600	$27,890	$32,920	$38,490
$10,270	$16,830	$23,110	$28,520	$33,660	$39,360
$10,430	$17,100	$23,470	$28,970	$34,190	$39,980
$10,520	$17,240	$23,670	$29,220	$34,480	$40,330
$10,540	$17,270	$23,710	$29,270	$34,540	$40,400
$10,550	$17,290	$23,730	$29,290	$34,570	$40,430
$10,570	$17,320	$23,780	$29,350	$34,640	$40,510
$10,640	$17,430	$23,930	$29,540	$34,860	$40,770
$10,800	$17,700	$24,300	$30,000	$35,400	$41,400
$11,000	$18,030	$24,750	$30,550	$36,050	$42,160
$11,090	$18,170	$24,940	$30,780	$36,330	$42,480
$11,090	$18,170	$24,940	$30,790	$36,340	$42,500
$11,120	$18,220	$25,010	$30,870	$36,430	$42,610
$11,390	$18,670	$25,630	$31,630	$37,330	$43,650
$11,400	$18,680	$25,640	$31,650	$37,350	$43,680
$11,430	$18,740	$25,720	$31,750	$37,470	$43,820
$11,600	$19,010	$26,100	$32,210	$38,010	$44,450
$11,960	$19,600	$26,910	$33,210	$39,190	$45,830
$12,100	$19,830	$27,230	$33,610	$39,660	$46,390
$12,400	$20,320	$27,900	$34,440	$40,640	$47,530
$12,540	$20,550	$28,210	$34,820	$41,090	$48,060
$12,580	$20,610	$28,290	$34,920	$41,210	$48,190
$12,630	$20,690	$28,400	$35,060	$41,380	$48,390
$13,810	$22,630	$31,070	$38,350	$45,260	$52,930
$13,950	$22,870	$31,390	$38,750	$45,730	$53,480
$14,170	$23,230	$31,890	$39,360	$46,450	$54,320
$14,750	$24,170	$33,170	$40,950	$48,330	$56,520

[FR Doc. 03–13523 Filed 5–29–03; 8:45 am]
BILLING CODE 4510–30–C

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 supersedes 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 publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

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 22nd day of May, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–13413 Filed 5–29–03; 8:45 am]
BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''BLS Occupational Safety and Health Statistics Federal/State Cooperative Agreement Application Package.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 29, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has delegated to the BLS the authority to collect, compile, and analyze statistical data on work-related injuries and illnesses. The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The BLS requires financial reporting that will produce the information that is needed to monitor the financial activities of the BLS Occupational Safety and Health Statistics grantees.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Continued collection of grantee financial information is necessary to maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The burden estimates are based on actual experience of grantees completing the forms.

Public comments on the accuracy of the burden estimates, as well as suggestions for reducing the burden, are encouraged. Signatures that certify the authenticity of the information will continue to be required.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: BLS Occupational Safety and Health Statistics Federal/State Cooperative Agreement Application Package.

OMB Number: 1220–0149.

Affected Public: State Governments.

Forms	Total respondents	Frequency	Average burden (in hours)		Estimated total burden (in hours)
			Per response	Annually	
Work Statements	56	1	2	2	112
BLS–OSHS1	56	1	2	2	112
BLS–OSHS2	56	4	1	4	224
Total	56	6	5	8	448

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of May, 2003.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–13524 Filed 5–29–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for GPRA Performance Assessment (#13853); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for GPRA Performance Assessment (AC/GPA) (#13853).

Date and Time: June 24, 2003, 8:30 a.m.–10 a.m.; June 25, 2003, 8:30 a.m.–12 (Noon); June 26, 2003, 8:30–4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

For Further Information Contact: Mr. Thomas N. Cooley, Chief Financial Officer, National Science Foundation, Room 405, Arlington, Virginia 22230 (Tel. 703/292–8200).

Type of Meeting: Open (*see* agenda below).

National Science Foundation, Suite 405, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–4609. If you are attending the meeting and need access to the NSF building, please contact Carol Heffner (E-mail: *cheffner@nsf.gov.*) so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) Director regarding the Foundation's performance as it relates to the Government Performance and Results Act of 1993.

Agenda: Topics include results (outcomes and outputs) of past awards as they relate to indicators associated with the National Science Foundation's PEOPLE, IDEAS and TOOLS outcome goals; the quality, relevance, and balance of NSF award portfolios; and potential future impact of NSF investment portfolios.

June 24, 2003 (Tuesday), 8:30 a.m.–10 a.m.

Welcome and Introduction
Background and Charge for GPRA Assessment
NSF Priority Setting and Investment

June 25, 2003 (Wednesday), 8:30 a.m.–12 (Noon)

Subcommittee Presentations and Discussion

June 26, 2003 (Thursday), 8:30 a.m.–4 p.m.

Subcommittee Presentations and Preparation of Report Draft

Dated: May 27, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–13571 Filed 5–29–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions; Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Volume 68, Number 96, **Federal Register,** pages 27112–27113, May 19, 2003.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 22, 2003.

Closed

Committee on Programs and Plans (8 a.m.–10 a.m.), Room 1235.

Plenary Session of the Board (12 noon–1 p.m.), Room 1235.

Open

Committee on Programs and Plans (10:05 a.m.–11:15 a.m.), Room 1235.

Plenary Session of the Board (1 p.m.–3:30 p.m.), Room 1235.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. *www.nsf.gov/nsb.*

STATUS: Part open and part closed (change).

CONTACT FOR INFORMATION: NSF Information Center (703) 292–5111.

CHANGES IN THE MEETING: The following item was moved from open to closed session of the Committee on Plans and Programs and the Plenary Session of the National Science Board by unanimous vote of the Board. The Board determined that its business required this change. Public announcement of this change was provided on the NSF Web site; no earlier notice was possible.

NSB Information Item: Division of Atmospheric Sciences.

Cathy Hines,

Operations Officer.

[FR Doc. 03–13610 Filed 5–27–03; 4:56 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

St. Lucie, Units 1 and 2, Florida Power and Light Company; Notice of Availability of the Final Supplement 11 to the Generic Environmental Impact Statement Regarding License Renewal for St. Lucie, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 11 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–67 and NPF–16 for St. Lucie, Units 1 and 2 (St. Lucie), for an additional 20 years of operation. St. Lucie is owned and operated by Florida Power and Light Company (FPL), and is located on Hutchinson Island in St. Lucie County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

It is stated in Section 9.3 of the report:

> Based on (1) the analysis and findings in the GEIS (NRC 1996, 1999); (2) the Environmental Report submitted by FPL (FPL 2001b); (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for St. Lucie Units 1 and 2 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

The final Supplement 11 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION, CONTACT: Dr. Michael T. Masnik, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at 301–415–1191 or by writing to: Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, MS O–11F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of May, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13527 Filed 5–29–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47911; File No. SR–Amex–2003–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard & Poor's 500 Stock Index

May 22, 2003.

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 May 19, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Section 107A of the Amex Company Guide (''Company Guide''), notes linked to the performance of the Standard & Poor's 500 Index (''Index'').

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

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 Amex 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 III below. The Amex 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

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance of which is linked to the Index (the ''Targeted Efficient Equity Securities'' or ''Notes'').[4] The Index is determined, calculated and maintained solely by S&P.[5] The Notes will provide for a multiplier of any positive performance of the Index during such term subject to a maximum payment amount or ceiling.

The Notes will initially conform to the listing guidelines under Section 107A [6] and continued listing guidelines under Sections 1001–1003 [7] of the Company Guide. The Notes are senior non-convertible debt securities of Wachovia. The Notes will have a term of not less than one, nor more than ten years. Wachovia will issue the Notes in denominations of whole units (a ''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the Index. At maturity, if the value of the Index has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three (3) times the amount of that percentage increase, not to exceed a maximum payment (the ''Capped Amount'') to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the Notes are not ''principal protected,'' and are fully exposed to any decline in the level of the Index.[8] The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Index at the close of the market on five (5) business days shortly before maturity of the Notes (the ''Final Level'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Initial Level'').

If the Final Level is greater than the Initial Level, the Redemption Amount per Unit will equal:

$$\$10 + [30 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right)], \text{ subject to Capped Amount.}$$

If the Final Level is less than the Initial Level, the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the Index.[9]

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Wachovia Corporation (''Wachovia'') and Standard & Poor's Corporation (''S&P'') have entered into a non-exclusive license agreement providing for the use of the Index by Wachovia and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

The Exchange stated that the Index value will be disseminated at least once every fifteen seconds throughout the trading day. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Hong-Ahn Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 22, 2003.

[5] The Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. (''NYSE'') or traded through the Nasdaq Stock Market, Inc. (''Nasdaq''). The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

[6] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] A negative return of the Index will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

[9] *See* Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the

Continued

As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7.503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes.[10] First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[11] Second, the Notes will be subject to the equity margin rules of the Exchange.[12] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Wachovia will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[13] in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2003–46 and should be submitted by June 20, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[15] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[16] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[17]

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the Index has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to a cap.

The Commission notes that the Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of

Index); 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index); and 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes based on the Select Fifty Index).

[10] Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Hong-Anh Tran, Special Counsel, Division, Commission, dated May 20, 2003.

[11] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[12] *See* Amex Rule 462.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the DJIA); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Select Fifty Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Amount, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Exchange's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Wachovia will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of material, non-public information by its employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7.503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index, should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Wachovia. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[18] In any event, financial information regarding Wachovia, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.[19]

The Commission also has a systemic concern, however, that a broker-dealer such as Wachovia, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[20] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Wachovia.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[21] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[22] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–2003–46), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13497 Filed 5–29–03; 8:45 am]

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[18] *See* Company Guide Section 107A.

[19] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[20] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[21] *See supra* note 16.

[22] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47902; File No. SR–OCC–2002–14]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Procedures for Processing Late and Supplementary Exercise Instructions

May 22, 2003.

I. Introduction

On June 28, 2002, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2002–14 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 4, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change amends Rules 801(e) and 805(g) to modify OCC's fees for processing late exercise instructions and supplementary exercise notices and amends Rule 801(e) to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise notice after the start of critical processing.

Background

Rule 801 sets forth the procedures for submitting exercise notices on a business day which is not an expiration date, including the requirement that such submissions be completed by 7 p.m. (All times are Central Time.) Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 p.m. for the purpose of correcting *bona fide* errors. Authority to accept or reject such late instructions is vested with the Chairman, Management Vice Chairman, President, or such officer's delegate.

If a late instruction is accepted, Rule 801(e) requires the clearing member submitting the instruction to pay a late filing fee.[3] The fees for late instructions increase the later the notice is received. Late instructions accepted for filing after the start of critical processing are processed on a best efforts basis and only if the assigned clearing member(s) can be notified before 8 a.m. Previously submitted exercises may not be revoked after the start of critical processing.

These late exercise procedures help provide a monetary incentive for clearing members to take precautions to avoid exercise errors and to identify those errors that do occur earlier in OCC's processing cycle. The earlier late exercise notices are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted before the start of OCC's critical processing cycle can be readily accommodated through standard procedures. Late exercise notices submitted after the start of critical processing require supplemental assignment procedures.

Rule 805 sets forth the procedures for submitting exercise notices on expiration dates. Rule 805 permits clearing members to submit exercise notices with respect to expiring options (''supplementary exercise notices'') after the normal deadline but before their expiration time (*i.e.*, 10:59 P.M.) by following prescribed procedures. A clearing member submitting such a supplementary exercise notice is required to pay a late filing fee.[4] As under Rule 801, the filing fees increase the later the notice is received. Supplementary exercise notices submitted in accordance with the prescribed procedures are irrevocable.

Discussion

OCC recently completed a review of these rules as a result of an increase in the number of late instructions received from clearing members. Based on that review, OCC is changing the applicable fee schedules and cut-off times for processing late instructions and supplementary exercise notices.

Fees

One of the principal purposes for charging a filing fee for late instructions under both Rule 801 and Rule 805 is to provide an incentive for clearing members to discover exercise errors earlier in the processing cycle. The recent increase in the number of late instructions has led OCC to conclude that the current fee schedules do not provide a sufficient incentive. The current and proposed fee schedules are as follows:

Rule 801(e)

Submission time	Current fee	Proposed fee
7 p.m.–8 p.m.	$500/any accepted request	$2,000/any accepted request.
8:01 p.m.–start of critical processing	$2,000/any accepted request	$5,000/any accepted request.
After start of critical processing up until 8 a.m.[5]	$10,000/line item on any exercise notice or modification accepted.	$20,000/line item on any exercise notice accepted.[6]

[5] On approval of this filing, this time will be 6:30 a.m.
[6] On approval of this filing, only exercise notice (*i.e.,* not modifications) will be accepted after the start of critical processing.

Rule 805(g)

Submission time	Current fee	Proposed fee
After the prescribed deadline for the submission of exercise instructions—start of critical processing.	$2,000/any exercise notice accepted	$5,000/any exercise notice accepted.
After start of critical processing—expiration time	$10,000/line item on any exercise notice accepted.	$20,000/line item on any exercise notice accepted.

[1] 15 U.S.C. 78s(b)(1).
[2] Securities Exchange Act Release No. 47396 (February 24, 2003), 68 FR 10293.
[3] Late filings, revocations, and modifications of exercise may also be the subject of disciplinary action. Rule 801(e)(4) and 805(g).
[4] Late filings of supplementary exercise notices may also be the subject of disciplinary action. *See* note 3 above.

Late Exercise Cut-Off Time; Instructions To Modify

Rule 801(e) does not specify a cut-off time for the acceptance of late exercise notices. To provide for greater consistency in processing late exercise notices, OCC has concluded that it is desirable to establish a uniform cut-off time (*i.e.*, 6:30 a.m.) for their acceptance. A 6:30 a.m. cut-off allows adequate time for OCC to process a late exercise notice and to inform all assigned clearing members before 8 a.m.

Finally, OCC will no longer accept modifications to previously submitted exercise instructions after the start of critical processing. Rule 801(e) currently provides that modifications will be accepted after the start of critical processing on a best efforts basis, but revocation instructions will not be accepted after the start of critical processing. This prohibition is in place because due to the need to back out data the procedures involved in processing revocations are riskier than those associated with accepting a late exercise. A modification that reduces the number of exercised contracts requires use of the same revocation procedures. OCC therefore believes that modifications and revocations should be treated alike. A request by a clearing member to exercise additional contracts will be considered as a request to file a late exercise (and not a request to modify a previously submitted exercise notice) and will be handled pursuant to the rules applicable to late exercise instructions.

III. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] The Commission finds OCC's proposed rule change is consistent with section 17A(b)(3)(F) of the Act because it should reduce the number of late exercise instructions submitted to OCC. Late instructions are more time consuming and costly for OCC to process and reducing the number of them submitted for processing should promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13496 Filed 5–29–03; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Certification by Religious Group—20 CFR, Subpart K, 404.1075–0960–0093.* The data collected on Form SSA-1458 will be used to determine if a religious group meets the qualifications set out in Section 1402(g) of the Internal Revenue Code, which permits its members to be exempt from the payment of self-employment taxes. The respondents are spokespersons for a religious group or sect.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

2. *Statement of Care and Responsibility for Beneficiary—20 CFR, Subpart U, 404.2020–.2025 & Subpart F, 416.620–.625—0960–0109.* Form SSA–788 is used to obtain information from the beneficiary's custodian about the representative payee applicant's concern and responsibility for the beneficiary. The respondents are individuals who have custody of a beneficiary, where someone else has filed to be the beneficiary's payee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 21,667 hours.

3. *Request for Reconsideration—Disability Cessation—20 CFR, Subpart J, 404.909 & Subpart N, 416.1409—0960–0349.* Form SSA–789 is used by SSA to schedule disability hearings and to develop additional evidence/information for claimants whose disability is found to have ceased, not to have existed, or to no longer be disabling. The information will also be used to determine if an interpreter is needed for the disability hearing. The respondents are claimants under Title II & XVI of the Social Security Act who wish to request reconsideration of disability cessation.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10—13.5 minutes.

Estimated Annual Burden: 10,045 hours.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

4. *Psychiatric Review Technique—20 CFR, Subpart P, 404.1520(a) Subpart I 416.920(a)–0960–0413.* Form SSA–2506–BK assists the Disability Determination Services (DDS) in evaluating mental impairments by helping to (1) identify the need for additional evidence for impairment severity; (2) consider aspects of the mental impairment relevant to the individual's ability to perform work-related mental functions, and (3) organize and present the findings in a clear, concise and consistent manner. The respondents are 54 State DDSs administering Title II and title XVI disability programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Responses: 1,253,703.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 313,426 hours.

5. *Request for Reconsideration—20 CFR, Subpart J, 404.907–.921 and Subpart N, 416.1407–.1421—0960–0622.* The information collected on Form SSA–561 is used by SSA to document and initiate the reconsideration process for determining entitlement to Social Security benefits (Title II), Supplemental Security Income payments (Title XVI), and Special Veterans benefits (Title VIII). The respondents are individuals filing for such reconsideration.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,455,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 194,000 hours.

6. *Request for Withdrawal of Application—20 CFR, Subpart E, 404.460—0960–0015.* Form SSA–521 is completed by SSA when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

7. *Collection of SSI Overpayments from Special Benefits for Certain WWII Veterans; 20 CFR, Subpart E, 416.570 & .572.—0960–0653.* The information collection requirement in 20 CFR 416.570 allows for an individual to request to withhold a title XVI overpayment from Title II/VIII benefits. The information collection requirement in 20 CFR 416.572 allows for an individual to elect a higher or lower rate of withholding for recovery of an SSI overpayment. The information collected will be used to determine the proper rate of withholding of benefits to recover program overpayments. The respondents are Title II or Title VIII beneficiaries who were overpaid title XVI benefits and who request a higher rate of recovery than specified in 20 CFR 416.571.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,500.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 2,500 hours.

8. *Medical or Psychological Consultant's Review of Childhood Disability Evaluation Form—20 CFR, Subpart J, 416.1040, .1043, .1045—0960–NEW.* Form SSA–536 is used by SSA medical or psychological consultants to document their review and assessment of the Childhood Disability Evaluation Form, SSA–538, prepared by State DDS employees. A childhood disability evaluation is required in each SSI childhood disability case. Therefore, the consultants must prepare an assessment form SSA–536 for each childhood disability case that is reviewed. The respondents are 256 SSA medical and psychological consultants.

Type of Request: Approval of an existing information collection.

Number of Responses: 17,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 3,400 hours.

9. *Individuals or Agents Seeking Information or Testimony in Non-Social Security Administration Cases—20 CFR 403.120—0960–0619.* 20 CFR 403.120 establishes a procedure whereby an individual, organization or governmental entity may request testimony of an agency employee in a legal proceeding to which the agency is not a party. The request, which must be in writing to the Commissioner, must fully explain the nature and the relevance of the sought testimony and include the time, date, and place where the testimony will be given. Respondents are individuals or their representatives who require testimony from Social Security Administration employees in a legal proceeding to which the Social Security Administration is not a party.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 40 hours.

10. *Medical Consultant's Review of Mental Functional Capacity Assessment—20 CFR, Subpart O, 404.1520(a); Subpart Q, 404.1640, 404.1643, 404.1645; and Subpart I 416.920(a)—0960–NEW.* Form SSA–392–SUP is used by SSA's medical/psychological consultants to document their review and assessment of the Mental Residual Functional Capacity Form or SSA 4734–F4–SUP. The SSA–392–SUP documents whether the reviewer agrees or disagrees with the manner in which the SSA 4734–F4–SUP was completed. The SSA 392–SUP is required for each SSA 4734–F4–SUP form completed. The respondents are the 256 SSA medical/psychological consultants.

Type of Request: Approval of an existing information collection.

Number of Responses: 45,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 9,000 hours.

11. *Medical Consultant's Review of Physical Functional Capacity Assessment; 20 CFR Subpart O 404.1520(a), Subpart Q 404.1640, 404.1645, 404.1643, and 416.920(a), Subpart I—0960–NEW.* SSA–392 is used by SSA's medical consultants to document their review and assessment of the Physical Residual Functional Capacity Form, the SSA–4734, prepared by State DDS offices. The SSA–392 is required for each SSA–4734 form completed. The respondents are the 256 SSA medical consultants.

Type of Request: Approval of an Existing Information Collection.

Number of Responses: 92,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 18,400 hours.

12. *Medical Consultant's Review of Psychiatric Review Technique; 20 CFR Subpart O 404.1520(a), Subpart Q 404.1640, 404.1643, 404.1645—0960–NEW.* SSA measures the performance of DDSs in the area of quality of documentation and determinations on claims. In mental claims, a Psychiatric Review Technique Form (PRTF) is completed by DDS employees. SSA medical/psychological consultants use Form SSA–3023 to document their

review and assessment of the information on the PRTF. The SSA consultant completes an SSA–3023 for each PRTF in the claims file. The respondents are the 256 medical/psychological consultants.

Type of Request: Approval of an existing information collection.

Number of Responses: 68,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 13,600 hours.

13. *Request for Withdrawal of Application— 20 CFR 404.460—0960–0015.* Form SSA–521 is completed by SSA when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

14. *Privacy and Disclosure of Official Records and Information: Availability of Information and Records to the Public—20 CFR 401 and 402—0960–0566.* The information collected is needed (a) to identify individuals who request access to their records; (b) designate an individual to receive and review sensitive medical records; (c) correct or amend records; (d) obtain consent from an individual to release his/her records to others; (e) facilitate the release of information under the Freedom of Information Act; and (f) to grant a waiver or reduction of fees for records. The respondents are individuals requesting access to their SSA records, correction of their SSA records and disclosure of SSA records. The reporting burden is shown below:

(a) *Number of Respondents:* 10,000.

Frequency of Response: On Occasion.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 1,833 hours.

(b) *Number of Respondents:* 3,000.

Frequency of Response: On Occasion.

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 6,000 hours.

(c) *Number of Respondents:* 100.

Frequency of Response: On Occasion.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

(d) *Number of Respondents:* 200,000.

Frequency of Response: On Occasion.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 10,000 hours.

(e) *Number of Respondents:* 15,000.

Frequency of Response: On Occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,250 hours.

(f) *Number of Respondents:* 400.

Frequency of Response: On Occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 33 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Special Benefits for World War II Veterans—20 CFR, Subpart C, 408—0960–0615.* Form SSA–2000–F6 is used by SSA to elicit information necessary to determine the entitlement of an individual to a monthly benefit under Title VIII of the Social Security Act. The respondents are persons outside the U.S. applying for benefits for themselves (or for someone else) under Title VIII of the Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 400.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 133 hours.

2. *Third Party Liability Information Statement—42 CFR 433.136-.139—0960–0323.* SSA obtains third party liability information for States under the terms of an agreement with the Centers for Medicare and Medicaid Services, which oversees administration of the Medicaid program. Medicaid State agencies use the information that SSA gathers on Form SSA–8019–U2 to bill third parties liable for medical care, support, or services to insure that Medicaid remains the payer of last resort. The respondents are SSI applicants and beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 95,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 7,917 hours.

3. *Appointment of Representation—20 CFR, 404.1707, 410.684, and 416.1507—0960–0527.* The information collected by SSA on form SSA–1696–U4 is used to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The affected public consists of applicants who notify SSA that they have appointed a person to represent them in their dealings with SSA when claiming a right to benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 551,520.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 91,920.

4. *Request for Workers' Compensation/Public Disability Information—20 CFR, Subpart E, 404.408—0960–0098.* SSA uses form SSA–1709 to request and/or verify information about workers' compensation or public disability benefits given to Social Security disability recipients so that the proper adjustment is made to their monthly benefits. The respondents are Federal, State, and local agencies administering workers' compensation or public disability benefits, private workers, insurance carriers and public or private self-insured companies.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 140,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 35,000 hours.

5. *Self-Employment/Corporate Officer Questionnaire—20 CFR 404.435(e) 404.446—0960–0487.* Form SSA–4184 is used to develop earnings data and corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The information collected is used to determine benefit amounts. The respondents are self-employed individuals and corporate officers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 6,667 hours.

6. *Disability Report, Appeal—20 CFR 404.1512 and 416.912, 20 CFR 404.916(c) and 416.1416(c)—0960–0144.* SSA uses form SSA–3441 to secure updated resource and condition information from claimants seeking

reconsideration of denied disability benefits. The claimant also has the option of providing the information during a personal interview or through SSA's Internet application. This information assists the State DDS and Administrative Law Judges (ALJ) in preparing for appeals and hearings and in issuing a decision on whether or not an individual is entitled to or continues to be entitled to disability benefits. SSA requests completion of the SSA–3441 when individuals appeal denial of Social Security Disability Income (SSDI) and SSI benefits following a previous denial. The respondents are applicants for reconsideration of initial denial of disability benefits or reconsideration of disability cessation and individuals requesting hearings before an ALJ.

Type of Request: Revision of an OMB-approved information collection. SSA will collect this information using both the traditional paper format and electronic formats through SSA information gathering systems and an online Internet collection as follows:

	Number of respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden (in hours)
SSA–3441 (Paper Form)	1,079,338	1	30	539,669
Electronic Disability Collection System (EDCS)	16,790	1	30	8,395
I3441 (Internet Form)	16,690	1	60	16,690
Total respondents and burden hours	1,112,818			564,754

Dated: May 22, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–13532 Filed 5–29–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Labor-Management Board Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Transportation (DOT) announces a meeting of the Transportation Labor-Management Board (Board). Notice of the meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Board will meet on Wednesday, June 11, 2003, at 9 a.m., at the U.S. Department of Transportation, Nassif Building, room 7418, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 7th floor.

TYPE OF MEETING: The meeting is open to the public. Please note that visitors without a government identification badge should enter the Nassif Building at the Southwest lobby, for clearance at the Visitor's Desk. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: Stephen Gomez, Workforce Environment and Pay Division, M–13, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–9455 or 4088.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to hear oral reports from three subcommittees on Human Capital, Competitive Sourcing, and the Labor Relations Climate Survey on the issues and potential outcomes in their areas of interest, and to sign the Transportation Labor-Management Board Charter.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Stephen Gomez at the address shown above. Comments should be received by June 2, 2003 in order to be considered at the June 11th meeting.

Issued in Washington, DC, on May 22, 2003.

For the U.S. Department of Transportation.

Linda Moody,

Associate Director, Workforce Environment and Pay Division.

[FR Doc. 03–13490 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–30]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on May 23, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–8693.

Petitioner: Beverly Air Transport.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Beverly Air Transport to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/02/2003, Exemption No. 8040.

Docket No.: FAA–2003–14879.

Petitioner: Xtrajet, Inc.

Section of 14 CFR Affected: 14 CFR 135.152(a).

Description of Relief Sought/Disposition: To permit Xtrajet to operate it's 1973 Gulfstream G–1159 airplane under part 135 without the airplane being equipped with an approved digital flight data recorder.

Grant, 05/05/2003, Exemption No. 8044.

Docket No.: FAA–2003–14377.

Petitioner: Evergreen Helicopters International, Inc.

Section of 14 CFR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit Evergreen Helicopters International, Inc. to operate its Bell Model 212 helicopters under part 135 without each Bell Model 212 being equipped with an approved digital flight data recorder.

Grant, 05/02/2003, Exemption No. 8043.

Docket No.: FAA–2002–11938.

Petitioner: Friends of Allen County Airport.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Friends of Allen County Airport to conduct local sightseeing flights at the Allen County Airport, Iola, Kansas, on June 14, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/05/2003, Exemption No. 8045.

Docket No.: FAA–2003–14918.

Petitioner: Aero Charter and Transport, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Aero Charter and Transport, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/05/2003, Exemption No. 8047.

Docket No.: FAA–2001–9379.

Petitioner: Air Transport Association.

Section of 14 CFR Affected: 14 CFR 121.613, 121.619(a), and 121.625.

Description of Relief Sought/ Disposition: To permit Air Transport Association member airlines and other similarly situated part 121 operators to continue to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination airport, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state that weather conditions will be at or above the authorized weather minimums.

Grant, 05/02/2003, Exemption No. 3585N.

Docket No.: FAA–2003–14930.

Petitioner: Air Arctic, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Arctic, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/05/2003, Exemption No. 8048.

Docket No.: FAA–2001–9135.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To permit The Boeing Company to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, 747, DC–10, MD–10, and MD–11 airplanes without obtaining a special ferry permit.

Grant, 05/05/2003, Exemption No. 4467I.

Docket No.: FAA–2003–14921.

Petitioner: Wilson Aviation.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Wilson Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/05/2003, Exemption No. 8046.

Docket No.: FAA–2003–14920.

Petitioner: Southeast Air Charter.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Southeast Air Charter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/02/2003, Exemption No. 8042.

Docket No.: FAA–2003–15039.

Petitioner: Hudson Air Service, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Hudson Air Service, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/02/2003, Exemption No. 8041.

Docket No.: FAA–2001–9791.

Petitioner: NockAir Helicopter, Inc.

Section of 14 CFR Affected: 14 CFR 133.43(a) and (b).

Description of Relief Sought/ Disposition: To permit NockAir Helicopter, Inc. to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or quick release device for carrying a person on a trapeze bar.

Grant, 05/06/2003, Exemption No. 6685C.

Docket No.: FAA–2001–10425.

Petitioner: National Test Pilot School.

Section of 14 CFR Affected: 14 CFR 91.319(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit the National Test Pilot School to operate aircraft that have experimental certificates to train flight-test students, who are pilots and flight engineers, through the demonstration and practice of flight-test techniques and to teach those students flight-test data acquisition methods for compensation. Additionally, the exemption revises the list of aircraft covered by the exemption.

Grant, 05/09/2003, Exemption No. 5778H.

Docket No.: FAA–2000–8185.

Petitioner: U.S. Airways, Inc.

Section of 14 CFR Affected: 14 CFR 121.440(a) and SFAR 58, paragraph 6(b)(3)(ii)(A).

Description of Relief Sought/ Disposition: To permit U.S. Airways, Inc. to meet line check requirements using an alternative line check program, subject to certain conditions and limitations.

Grant, 05/09/2003, Exemption No. 7665A.

Docket No.: FAA–2003–14895.

Petitioner: KP Air Service.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit KP Air Service to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/08/2003, Exemption No. 8050.

Docket No.: FAA–2003–14894.

Petitioner: Falcon Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Falcon Aviation, Inc. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/08/2003, Exemption No. 8051.

Docket No.: FAA–2003–15040.

Petitioner: West Texas Helicopter.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit West Texas Helicopter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.

Grant, 05/08/2003, Exemption No. 8052.

Docket No.: FAA–2001–10091.

Petitioner: Mr. Lloyd E. Swenson.

Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To permit Mr. Swenson to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 05/06/2003, Exemption No. 7593A.

[FR Doc. 03–13545 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In April 2003, there were four applications approved. This notice also includes information on three applications, one approved in January 2003, and the other two approved in March 2003, inadvertently left off the January 2003 and March 2003 notices, respectively. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Albany-Dougherty Aviation Commission, Albany, Georgia.

Application Number: 03–03–C–00–ABY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $454,849.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: July 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Southwest Georgia Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Install airfield fencing and replace locks.
Baggage claim enclosure.
Terminal environmental (phase I) update air handlers.
PFC application charges.
Construct air cargo apron—phases I and II (design).
Install runway visual guidance system.
Purchase rapid response aircraft rescue and firefighting (ARFF) vehicle and ARFF generator.
Construct air cargo apron—phases I and II.

Decision Date: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 03–09–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $688,938.

Earliest Charge Effective Date: July 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: Unscheduled part 135 air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and use:

Access security control.
Extension of fire alarm system to safety building.
Acquisition of property at 2825 Salinas/Monterey Highway.
Passback security system.
Terminal improvements and modifications.
Terminal fire door replacements, phase 2.
Generator power to security gate, phase 2.
Terminal expansion—second level.
Environmental impact report—airport roadway circulation projects (terminal road, north access road, and 28L service road).

Decision Date: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of St. George, Utah.

Application Number: 03–03–C–00–SGU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,354,902.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: October 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled, on-demand air carriers filling FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at St. George Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire ARFF vehicle.
Acquire a self-contained regenerative air airfield sweeper.
ARFF building improvements.
Replacement airport planning.
Replacement airport environmental impact statement.
Replacement airport phase II environmental impact statement.

Brief Description of Project Approved for Collection and Use: Construct replacement airport.

Decision Date: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Houghton, Hancock, Michigan.

Application Number: 03–09–C–00–CMX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $104,266.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: May 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment, 4 by 4 pickup truck with plow.
Access road lighting.
Airport directional signage and entrance road sign.

New electrical service to ARFF building.
Public address system rehabilitation in passenger terminal.
Terminal landside entrance rehabilitation.
Airport terminal apron pavement crack sealing.
Terminal airside entrance rehabilitation.
Thermal imaging cameras.
Unicom radio procurement.
Brick screen wall.
Runway 13 protection zone hazard removal.
PFC application preparation reimbursement.
Wildlife control/security fencing with perimeter road.
Snow removal equipment procurement, multi-purpose tractor with power broom.
Terminal bathroom rehabilitation.

Decision Date: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7272.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 03–05–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $17,509,405.

Earliest Charge Effective Date: January 1, 2008.

Estimated Charge Expiration Date: November 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena-Airport.

Brief Description of Projects Approved for Collection and Use: Terminal security enhancements.

Decision Date: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3630.

Public Agency: City of Greenville, Mississippi.

Application Number: 03–03–I–00–GLH.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $88,495.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: June 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mid-Delta Regional Airport.

Brief Description of Project Approved for Collection:

Terminal area drainage improvement and parking lot relocation.
Rehabilitate runway 9/27 and convert to taxiway.
Terminal building fire escape stairwell.

Decision Date: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Jackson Airports District Office, (601) 664–9885.

Public Agency: Port of Chelan County and Port of Douglas County, Wenatchee, Washington.

Application Number: 03–04–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $123,500.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Phase II pavement overlay—taxiway G slurry seal.
Equipment garage.
Security fencing.
Acquire vacuum runway sweeper.
Acquire curb sweeper.
Segmented circle and wind tree.
Update master plan.
Runway snow blower.

Decision Date: April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–04–MRY, Monterey, CA	03/21/03	$4,077,754	$4,104,131	10/01/00	10/01/00
00–06–C–01–MRY, Monterey, CA	03/21/03	335,031	376,338	10/01/01	10/01/01
02–08–C–01–MRY, Monterey, CA	03/21/03	320,122	341,066	05/01/03	07/01/03
*00–03–C–01–CSG, Columbus, GA	04/01/03	1,251,387	1,251,387	11/01/04	11/01/04
99–04–C–01–PBI, West Palm Beach, FL	04/02/03	18,933,000	11,999,332	12/01/00	03/01/01
93–01–C–01–MTJ, Montrose, CO	04/04/03	1,461,745	1,422,535	02/01/09	08/01/03
92–01–C–04–STL, St. Louis, MO	04/10/03	71,642,933	67,933,947	08/01/95	08/01/95
95–01–C–03–LYH, Lynchburg, VA	04/18/03	296,723	185,940	08/01/98	07/01/96
00–02–C–01–LYH, Lynchburg, VA	04/18/03	832,756	827,616	06/01/02	06/01/02
01–03–C–02–LYH, Lynchburg, VA	04/18/03	705,654	705,654	06/01/05	06/01/05
00–01–C–02–VPS, Valparaiso, FL	04/21/03	34,278,718	34,407,710	11/01/19	08/01/18

NOTE: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Columbus, GA, this change is effective on June 1, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–13544 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–112–16]

Interim Policy on Amendment 25–87 Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed interim policy on Amendment 25–87 requirements.

DATES: Send your comments on or before June 30, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, Propulsion and Mechanical Systems Branch, ANM–112, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2147; fax (425) 227–1320; e-mail: *stephen.happenny@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Comments to Policy Statement No. ANM–03–112–16.'' Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed interim policy memorandum provides Federal Aviation Administration (FAA) certification policy on the compliance issues associated with high altitude flight. This memo provides applicants with information on how the FAA will evaluate petitions for exemption from § 25.841(a), as amended by Amendment 25–87. For airplanes with wing-mounted engines, this regulation in effect limits the maximum operating altitude of airplanes approved to this standard to 40,000 feet. Several airframe manufacturers have asked the FAA to develop a new safety standard, which is being addressed in rulemaking activities. Those manufacturers have also asked for interim policy to provide relief because high altitude flight offers benefits to airplane performance in terms of reduced drag and lower fuel burn.

Issued in Renton, Washington, on May 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 03–13541 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15025]

Notice of Request for Clearance of a New Information Collection: Truck Driver Fatigue Management Survey

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FMCSA to request the Office of Management and Budget (OMB) to approve a new information collection to query unionized truck drivers who operate commercial motor vehicles (CMVs) on overnight runs. The agency intends to collect information from these truck drivers on such issues as driver physical condition, amount of sleep, use of naps, fatigue coping strategies, hours on duty, hours driving, and nature of job. In addition, a sample of drivers will wear actigraphy watches to monitor and obtain objective measures of their sleep/wake time.

DATES: Comments must be submitted on or before July 29, 2003.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

Electronic Access

An electronic copy of this document may be downloaded using the Internet at the Office of the Federal Register's Home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov*. Please follow the instructions on-line for additional information and guidance.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carroll, Transportation Specialist, (202) 385–2388, Research Division, Office of Research and Technology, Federal Motor Carrier Safety Administration, 600 Virginia Avenue, SW., Suite 600, Washington, DC 20024. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Driver Fatigue Management Survey.

Background: The Senate Report 107–38 (Committee Report), and the House of Representatives Report 107–308 (Conference Report) of the Department of Transportation and Related Agencies Appropriations Bill, 2002 (Pub. L. 107–87) (December 18, 2001), specifically

requires the Federal Highway Administration (FHWA), now the FMCSA, to conduct a Truck Drivers' Fatigue Management Survey, within the funds provided, with an organization representing unionized motor carriers in cooperation with their labor organization. The Committee included $400,000 for a study to determine the fatigue management techniques used by truck drivers operating CMVs during overnight runs.

Truck driver fatigue, as well as techniques to manage it, has been a research and regulatory priority in the U.S. and Canada for the last decade. For instance, both U.S. and Canadian drivers participated in the Driver Fatigue and Alertness Study conducted by the FHWA and Transport Canada in the 1990s, as well as the current jointly funded study, the Fatigue Management Technologies Pilot Test. In addition, Transport Canada forwarded a recommended National Safety Code, Standard #9—Hours-of-Service, to the Council of Transportation Ministers in September 2002. Finally, on April 28, 2003, the FMCSA published a revised Hours-of-Service of Drivers Final Rule in the **Federal Register** (68 FR 22456).

Congress has been particularly interested in the truck driver fatigue issue and has directed the FMCSA to conduct numerous studies—including those mentioned above—on various aspects of the problem. Most recently, in the Senate Appropriations Committee mark-up of the Fiscal year 2002 DOT Appropriations Bill, FMCSA was directed to conduct ''a study to determine the fatigue management techniques used by truck drivers during overnight operations with an organization representing unionized motor carriers in cooperation with their labor organization.'' In recognition of congressional intent, a Pre-solicitation Notice was published in the **Federal Register** on July 1, 2002, describing the anticipated sole-source award to the Motor Freight Carriers Association (MFCA), and on September 30, 2002, FMCSA awarded the MFCA a contract to conduct a Truck Driver Fatigue Management Study.

Recent research has underscored the overwhelming influence of time of day on truck driver alertness. But, the same research has shown that there are significant individual differences in alertness during night driving, even when drivers have adequate sleep. Yet, the trucking industry must operate 24 hours a day in order to meet customer demands. In addition, the highways are least congested between midnight and 6 a.m. One segment—the unionized less-than-truckload (LTL)—has a long history of safe operations at night. Indeed, most of its over-the-road operations occur at night. A major reason for the exemplary safety record of MFCA companies is the professionalism of the Teamster's Union drivers they employ—more than 8,000 of the 42,000 drivers have at least one million accident-free driving miles with the same company. This truck driver workforce offers a tremendous untapped source of knowledge about techniques and lifestyle practices that are used to manage fatigue during night operations.

Specifically, the study will randomly survey Teamster drivers in MFCA companies who regularly operate on overnight runs. The survey will collect detailed information on such items as the nature of their job, what helps them cope, what are the challenges, how much and how long they sleep, their physical condition, the use of naps, and the impact of other road users on their alertness. A control group of Teamster drivers without one million accident free driving miles will also be surveyed. A sample of drivers will be studied prospectively using unobtrusive, objective wrist actigraphy watches to confirm the sleep-wake behaviors identified in the survey as being most likely to mitigate fatigue and maintain alertness during nighttime operations.

Respondents: The respondents to the planned survey will include approximately 2,000 selected motor carrier truck drivers of CMVs.

Average Burden Per Response: The estimated average burden per response is 30 minutes. This includes time needed for reading survey instructions, searching existing data sources, completing the survey instrument and returning the information by mail.

Estimated Total Annual Burden: The estimated total annual burden is 1000 hours.

Frequency: The survey will be conducted once.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; Pub. L. 107–87, 115 Stat. 833 and 49 CFR 1.73.

Issued on: May 22, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–13488 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15024]

Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), this notice announces the agency's intention to request the Office of Management and Budget (OMB) to renew its clearance of a currently approved information collection identified below under the heading ''Supplementary Information.'' This information collection renewal assures that motor carriers of property and passengers maintain an appropriate level of financial responsibility for operating on public highways.

DATES: Comments must be submitted on or before July 29, 2003.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

Electronic Availability: An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's

electronic bulletin board service (telephone: 202–512–1661). It may also be downloaded over the Internet, from the home page of the **Federal Register** at: *http://www.nara.gov/fedreg,* or the database of the Government Printing Office at: *http://www.access.gpo.gov/nara.* Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* This service is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 385–2423, Insurance Compliance Division (MC–ECI), Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Background: The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) Motor carriers of property to cover public liability, property damage, and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Form MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Form MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information embraced within these documents.

Respondents: Insurance and surety companies of motor carriers of property (Form MCS–90 and Form MCS–82) and motor carriers of passengers (Form MCS–90B and Form MCS–82B).

Average Burden Per Response: Two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or the Motor Carrier Public Liability Surety Bond; one minute to file the Motor Carrier Public Liability Surety Bond; one minute to have either document on board the vehicle (foreign-domiciled motor carriers only). These endorsements are maintained at the motor carrier's principal place of business (49 CFR 387.7 (iii)(d)).

Estimated Total Annual Burden: 5,285 hours.

Frequency: Upon creation, change, or replacement of an insurance policy or surety bond.

Public Comments Invited: Interested parties are invited to submit comments online through the Docket Management System (DMS) at *http//dmses.dot.gov/submit,* regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: 23 U.S.C. 315; 44 U.S.C. 3506(c)(2)(A); and 49 CFR 1.73.

Issued on: May 22, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–13489 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 30, 2003. No comments were received.

DATES: Comments must be submitted on or before June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2323; FAX: (202) 493–2180 or E-MAIL: *taylor.jones@marad.dot.gov.*

Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Voluntary Intermodal Sealift Agreement (VISA).

OMB Control Number: 2133–0532.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of dry cargo vessels.

Form(s): MA–1020.

Abstract: This information collection is in accordance with section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. Officials at the Maritime Administration and the Department of Defense use this information to assess the applicants' eligibility for participation in the VISA program.

Annual Estimated Burden Hours: 200 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

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 will 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on May 27, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13546 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 14, 2003. No comments were received.

DATES: Comments must be submitted on or before June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–3423; FAX: 202–366–3128; or E-Mail: *taylor.jones@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S.-Citizen Owned Documented Vessels.

OMB Control Number: 2133–0006.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Form(s): MA–29, MA–29A, MA–29B (**Note:** MA–29A is used only in cases of a National emergency).

Abstract: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or the transfer of foreign flag vessels by their owners as required by various contractual requirements. The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Annual Estimated Burden Hours: 200 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

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 will 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on May 27, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13547 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement Program To Support and Promote Law Enforcement Pedestrian Safety Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of a discretionary cooperative agreement program to support and promote law enforcement pedestrian safety programs.

SUMMARY: The National Highway Traffic Safety Administration (NHSTA) announces a discretionary cooperative agreement program to provide funding to individuals and organizations in support of law enforcement programs to promote pedestrian safety. Law enforcement is a crucial partner and a key element in promoting safety, but may not be equipped with effective tools to protect the walking public. NHTSA has a guide book titled *Law Enforcement Pedestrian Safety,* which was developed in the early 1990's. That document is currently under revision, however, critical elements of law enforcement involvement in pedestrian safety remain unchanged: Visible enforcement reduces traffic violations; traffic enforcement can promote and enhance other law enforcement missions; prevention of crashes is part of law enforcement's role; and, promoting pedestrian safety can be a non-adversarial way to work within the community.

NHTSA anticipates funding approximately four (4) demonstration projects for a minimum period of one year and a maximum period of two years. To this end, this cooperative agreement will support projects that promote law enforcement involvement in pedestrian safety programs.

This notice solicits applications from public and private, non-profit and not-for-profit organizations, State and local governments and their agencies, or a consortium of the above. Interested applicants must submit an application packet as further described in the application section of this notice. The application will be evaluated to determine the proposals that will receive funding under this announcement.

DATES: Applications must be received in the office designated below on or before 1 p.m. (e.d.t.), on July 8, 2003.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NPO–220) Attention: April Jennings, 400 Seventh Street SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–03–H–05078.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to April Jennings, Office of Contracts and Procurement at 202–366–9571, or by e-mail at *ajennings@nhtsa.dot.gov.* Programmatic questions relating to this cooperative agreement program should be directed to Essie Wagner, Safety Countermeasures Division, NHTSA, 400 Seventh Street, SW. (NTI–121), Washington, DC 20590, by e-mail at *ewagner@nhtsa.dot.gov* or by phone at 202–366–0932. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Walking, whether it is to school, across the street, or even across the parking lot, is at best taken for granted, or at worst, is deemed too dangerous. Parents are increasingly reluctant to let their children walk to school because of safety considerations. Older people continue to drive after they should have

given it up because they feel safer on the street than crossing it. In 2001, pedestrians accounted for 11½% of the nation's traffic fatalities and an estimated 78,000 injuries in police-reported crashes. Some portions of the population are at greater risk than others: for children under age 16, pedestrian crashes account for nearly 19% of the children killed in crashes in the year 2001; people over age 65 account for 21% of the pedestrian fatalities nationwide, though they account for only 13% of the population; alcohol involvement, either for the driver or for the pedestrian, was reported in 47% of the traffic crashes that resulted in a pedestrian fatality.

In many jurisdictions, the role of law enforcement is limited to post-crash activities, with little prevention. However, there are agencies located across the country that have implemented innovative approaches to preventing pedestrian crashes. Different strategies have included:

• *Pedestrian Decoy Operations*—enforcement that targets specific crosswalks that are problem locations. Drivers who do not yield to the pedestrian in the crosswalk (often a plain-clothed law enforcement officer) are ticketed for the violation. This is paired with outreach to local media outlets to ensure that the public is aware of the effort and the requirement to yield to pedestrians.

• *Traffic Law Enforcement Trouble-Shooting Meetings*—senior law enforcement agency personnel and officers assigned to traffic enforcement meet on a monthly basis to discuss particular traffic safety problems, crashes, and solutions. This creates an environment within the department that encourages and supports protecting pedestrian safety, and is responsive to problems that officers have identified.

• *Training Academy Courses*—some training academies have separate courses that specifically address pedestrian safety enforcement issues. They train officers on how to meet the needs of the walking public and to promote safety among drivers. Adjudication of violations is addressed, and strategies for promoting pedestrian safety are discussed.

• *Civil Partnerships*—some communities have pedestrian safety organizations as public-private partnerships. Law enforcement representation on the panel helps the policing agency to identify pedestrian safety problems and quickly move to eliminate them, and to work with local activists in a collaborative way.

• *Alcohol Outreach*—in jurisdictions in which alcohol-related pedestrian crashes are frequent, law enforcement agencies have engaged servers and bar owners in discussion to encourage them to be mindful that even if their patrons are not driving, they can be at risk for pedestrian crashes. In turn, the servers discuss the issue with their patrons, and encourage them to find alternate ways home or to exercise special care while walking.

Each of these approaches is a means of targeting the problem of pedestrian crash involvement. Each approach is tailored to the community in which it is implemented. In each department, the profile and importance of pedestrian safety is raised to a level that the community can support, because the community at large understands why law enforcement is taking action. These models of law enforcement can serve as a guide for other agencies to initiate programs and develop effective pedestrian crash countermeasures, to inform pedestrians and motorists of appropriate behavior, to reduce risky behavior, and to protect the walking public.

The above approaches can be initiated and completed within a one to two year time frame. Moreover, these approaches are expected to build local support and capacity for efforts to improve safe walking. There may be other models and strategies that are not described above which may also be appropriate for demonstration and implementation.

The challenge now before us is implementation—encouraging more departments to raise the priority of pedestrian safety. *Law Enforcement Pedestrian Safety* and its upcoming revision must not sit on a shelf. Rather the steps articulated in the document must be put into action to make walking safe for all. To help facilitate implementation efforts, NHTSA proposes to support approximately four (4) mini-grant programs aimed at putting into action law enforcement programs that promote pedestrian safety.

Copies of *Law Enforcement Pedestrian Safety* (DOT HS 808 008) are available from NHTSA via the hotline number, 888–327–4236. More information about the role of law enforcement in pedestrian safety can be found at the Pedestrian and Bicycle Information Center (PBIC) Web site, *www.walkinginfo.org/ee/enforcement.htm.*

Purpose

The purpose of this cooperative agreement program is to support implementation of law enforcement pedestrian safety programs. Approximately four mini-grant projects addressing pedestrian safety will be supported. Each cooperative agreement recipient will be expected to coordinate an effort that promotes pedestrian safety through a comprehensive and sustained program through a law enforcement agency. Project length will vary depending on the scope of the proposed effort. However, projects will be considered for a minimum of one year and a maximum of two years.

Objective

The objective is to provide seed monies to stakeholders for the purpose of implementing law enforcement pedestrian safety programs. Proposals may address any strategy or strategies, but must be supported by problem identification and/or crash data. Examples of possible projects include:

1. Identify the key components of an enforcement-based education campaign for motorists and pedestrians and pilot-test a program built on these. Innovative methods are encouraged.

2. Are there ways, other than a major public information campaign, of teaching motorists about watching for and yielding to pedestrians? If so, identify and pilot test innovative approaches.

3. Identify and pilot test innovative ways to teach officers about pedestrian safety and how to properly enforce the local laws among motorists and pedestrians.

4. With law enforcement, develop and test programs to encourage new partners, especially business and industry, to embrace and promote pedestrian safety.

5. Implement and evaluate pedestrian safety activities specifically designed to address nontraditional and diverse populations (*e.g.,* community-based education outreach; different ethnicities; disabilities; ages; geographical locations; etc.)

6. Implement and evaluate a pedestrian safety program that addresses alcohol impairment among pedestrians.

7. Identify and evaluate innovative enforcement efforts to enforce existing pedestrian safety laws. What methods of enforcement are most effective? Is there an association between enforcement and a decrease or increase in injuries and/or fatalities, or between enforcement and walking?

8. Identify and evaluate how pedestrian crash data are collected and recorded by law enforcement. What are the data collection procedures and practices? How do these affect the determination of fault between the driver and pedestrian? Do unreported injury crashes appear in local emergency departments?

9. Identify and evaluate pedestrian safety enforcement tools used to enforce traffic safety laws aimed at pedestrians and motorists. Who uses the tools? How are the tools used? Are the tools effective? What additional tools might be needed? How might these tools best be disseminated?

10. Investigate how courts are currently adjudicating pedestrian-related incidents. Include judicial outcomes.

11. Assess the availability and adequacy of pedestrian-related data and reporting systems used by courts.

12. Implement and evaluate a department-wide enforcement initiative to enforce pedestrian crossing laws that affects both motorists and pedestrians. Are there fewer violations? How often must targeted enforcement efforts be implemented to influence change within the community?

13. Implement and evaluate a department-wide assessment program that carefully examines each reported pedestrian crash on a monthly basis, communicates the findings to the traffic law enforcement division, and executes countermeasures immediately to prevent recurrence of similar crashes.

14. Demonstrates successful strategies to effectively work with local engineers and State and local departments of transportation to implement engineering solutions to improve pedestrian safety.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this cooperative agreement and to coordinate activities between the Grantee And NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and others (Federal, State, and local) interested in reducing pedestrian-related injuries and fatalities and promoting the activities of the grantee.

4. Review and provide comments on program content, materials, and evaluation activities.

5. Stimulate the transfer of information among grant recipients and others engaged in pedestrian safety activities.

Availability of Funds

Approximately $300,000 is available to fund a number of projects for up to $75,000 each. The total number of awards will depend on the quality of the projects submitted for consideration. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the Federal funds. Preference will be given to applicants with cost-sharing proposals. At the discretion of the government, funds may be obligated fully at the time of award of the cooperative agreement or incrementally over the period of the cooperative agreement. Nothing in this solicitation should be construed as committing NHTSA to make any award.

Period of Performance

The period of performance for this cooperative agreement will be not more than two (2) years from the effective date of award. However, the actual period of performance will depend on the scope of work for the submitted project.

Eligibility Requirements

Applications may be submitted by public and private, non-profit and not-for-profit organizations, and State and local governments and their agencies or a consortium of the above. Thus, universities, colleges, research institutions, hospitals, other public and private (non- or not-for-profit) organizations, and State and local governments are eligible to apply. Applications must fully involve law enforcement agencies, including letters of support from the agency head, and an officer that is assigned responsibility for the project explicitly identified in the application. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

To be eligible to participate in this cooperative agreement, applicants must meet the following special competencies:

1. Demonstrate expertise in traffic safety, program development and implementation, and knowledge and experience in pedestrian safety issues in the community that is to receive the award. Demonstrate knowledge and familiarity with data sources (including local data) needed to determine the incidence of pedestrian-related injuries, and access to the local data sources.

2. Demonstrate capability of technical and management skills to successfully administer and complete projects in a timely manner. Include a narrative description of the documented experience, clearly indicating the relationship to this project and providing details such as project description and sponsoring agency. References to completed final project reports should include author's name.

3. Demonstrate capacity to:

a. Design, implement, and evaluate innovative approaches for addressing difficult problems related to issues associated with pedestrian safety, crashes, and injuries;

b. Work successfully with pedestrian and other community groups;

c. Collect and analyze both quantitative and qualitative data; and

d. Synthesize, summarize, and report results, which are usable and decision-oriented.

4. Demonstrate experience in working in partnership with others, for example, law enforcement, engineering departments, schools, government agencies, the media, etc.

Application Procedures

Each applicant must submit one (1) original and two (2) copies of the application package to: NHTSA, Office of Contracts and Procurement (NPO–220), 400 Seventh Street, SW., Room 5301, Washington, DC 20590. Applications must include a completed *Application for Federal Assistance (Standard Form 424—Revised 4/88).* An additional two copies will facilitate the review process, but are not required.

Only complete packages received on or before 1 p.m., July 8, 2003 will be considered. No facsimile transmissions will be accepted. Applications must be typed on one side of the page only and contain a reference to NHTSA Cooperative Agreement Number DTNH22–03–H–05078. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Please direct cooperative agreement application questions to April Jennings, at 202–366–9571 or by e-mail at *ajennings@nhtsa.dot.gov.* Programmatic questions should be directed to Essie Wagner, by e-mail at *ewagner@nhtsa.dot.gov* or by phone at 202–366–0932.

Application Contents

A. The application package must be submitted with OMB Standard Form 424, (Rev 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, including 424A, Budget Information—Nonconstruction Program, and 424B, Assurances—Non-construction Programs, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful

evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakout of the proposed costs (detail labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrantees, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the projects in the project plan. The estimated costs should be separated and proposed on the basis of individual Federal fiscal years, *i.e.* beginning October 1, 2003 through September 30, 2004; October 1, 2004 through September 30, 2005; etc. No more than 10% of the funds from the NHTSA award may be used for overtime pay of officers. No more than 10% of the funds from the NHTSA award may be used for travel.

B. Funding sources other than the funds being provided through this cooperative agreement are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the project will be met.

C. Program Narrative Statement: Proposal must fully describe the scope of the project, detailing the activities and costs for which funding is being requested. Also, applications for this program must include the following information in the program narrative statement:

1. A table of contents including page number references.

2. A description of the community in which the grantee proposes to implement or pilot test a pedestrian safety program effort. For the purpose of this program a community includes a city, town, or county, small metropolitan area or a group of cities, towns, or counties in particular region that is covered by one or more law enforcement agencies that will be actively involved in this cooperative agreement. It should be large enough so that the program can have a demonstrable effect on walking and pedestrian safety. The description of the community should include, at a minimum, community demographics including population, the community's pedestrian safety problems, data sources available, existing traffic safety programs, pedestrian crossing laws, pedestrian education programs, and community resources.

3. A description of the project's or program's goal and how the grantee plans to meet the goal. The grantee must be specific with respect to the particular problem being addressed and how the grantee will successfully address the issues. For example, if the grantee is proposing to review and evaluate existing materials, how will the materials be identified? What partnerships may be necessary? What criteria will be used to evaluate the materials? How will the results be reported? Include letters of agreement and support, as appropriate.

4. A description of the specific activity proposed by the grantee. What actions will be undertaken to support the proposed project? What partners need to be involved in the effort to ensure success? To what degree has the buy-in of these groups been secured? How does the proposed project contribute to improving pedestrian safety? What is ''success'' and how will it be determined?

5. A description of the analytic plan, including how information (data) will be obtained, compiled, analyzed, and reported.

6. A description of how the proposed project will be managed. The application shall identify the proposed project manager and other personnel considered critical to the successful accomplishment of the project, including a brief description of their qualifications and respective organizational responsibilities. The role and responsibilities of the grantee and any others included in the application package shall be specified. The proposed level of effort in performing the various activities shall also be identified.

7. A detailed explanation of time schedules, milestones, and product deliverables, including quarterly reports and draft and final reports. (*See* Terms and Conditions of Award.)

8. A separately-labeled section with information demonstrating that the applicant meets all of the special requirements outlined in the Eligibility Requirements section of this announcement.

D. Commitment and Support: When other sources and organizations are required to complete the proposed effort, the grantee shall provide proof of such organizations' willingness to cooperate on the effort. In this cooperative agreement, the official in charge of the participating law enforcement agency must provide proof of willingness to cooperate. Such proof can be a letter of support or buy-in indicating what the organization will supply to the grantee. All critical partners shall provide letters of support, detailing what work the partner will do or what resources the partner will provide.

Application Review Process and Criteria

Each application package will be reviewed initially to confirm that the applicant is an eligible recipient, and has included all of the items specified in the Application Procedures section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria:

A. Program Approach (25 percent)

The extent to which the applicant is knowledgeable about law enforcement and other pedestrian safety efforts and programs. The extent to which the applicant clearly identifies and explains creative approaches to address pedestrian-related injuries and fatalities. If building on an existing approach or program, what are the innovative, new, or creative features that make this project different from what has been tried in the past? Has the applicant identified potential barriers associated with developing and implementing the new, creative approach? Has the applicant offered solutions for addressing the barriers? Has the applicant demonstrated how the project may be adaptable to other jurisdictions at a reasonable cost? Has the applicant identified partners and groups to work on the proposed project? Has the applicant specified who will be involved and what each will contribute to the project? What new or non-traditional partners has the applicant involved in the project?

B. Goals, Objectives, and Work Plan (20 percent)

The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, action-oriented, measurable, and achievable. The extent to which the work plan will achieve an outcome-oriented result that ultimately will reduce pedestrian-related crashes, injuries, and fatalities. The work plan must address what the applicant proposes to develop and implement; how this will be accomplished; and what major tasks/milestones are necessary to complete the project. This involves identification of, and solutions to, potential technical problems and critical issues related to successful completion of the project. The work

plan will be evaluated with respect to its feasibility, realism, and ability to achieve desired outcomes.

C. Special Competencies (15 percent)

The extent to which the applicant has met the special competencies (see Eligibility Requirements) including knowledge of and familiarity with law enforcement roles in pedestrian safety issues associated with the proposed intervention or effort, technical and management skills needed to successfully design, conduct, and evaluate the proposed effort; ability to work with various organizations and the walking community to implement programs or compile data; ability to design and implement approaches for addressing pedestrian safety related problems; and experience in fostering new programs within law enforcement agencies.

Project Management and Staffing (20 percent)

The extent to which the proposed staff are clearly described, appropriately assigned, and have adequate skills and experience. The extent to which the applicant has the capacity and facilities to administer and execute the proposed project. The extent to which the applicant has provided details regarding the level of effort and allocation of time for each staff position. The extent to which the applicant has design/evaluation expertise and expertise working with the community. The applicant must furnish an organizational chart and résumés of each proposed staff member. The applicant must include letters of commitment from the official in charge of the participating law enforcement agency. Is the applicant's staffing plan reasonable for accomplishing the objectives of the project within the time frame set forth in the announcement? Is the timeline submitted by the grantee reasonable? Has the applicant's financial budget provided sufficient detail to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort? Has financial or in-kind commitment of resources by the applicant's organization or other supporting organizations been clearly identified?

E. Analytic Plan (20 percent)

The extent to which the analytic plan clearly articulates the project's potential to make a significant impact on improving pedestrian safety or reducing pedestrian crashes, and associated injuries and fatalities. The extent to which the analytic plan indicates how the information/data collected in the project will be compiled, analyzed, interpreted and reported. When information is qualitative, what criteria will be used to analyze it? Are there sufficient data/information sources and is access ensured from appropriate owners or collectors of data to obtain and appropriately analyze the quantitative and qualitative information needed on the proposed project?

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, State, local, and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration of award, preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for Drug Free Work Place (Grants).

2. Reporting Requirements and Deliverables:

A. Quarterly Progress Reports must include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. Any problems and issues that may arise and need the attention of the Contracting Officer's Technical Representative (COTR) or Contracting Officer (CO) should be clearly identified in the quarterly report in a specific, identified section. The grantee shall supply the progress report to the COTR every ninety (90) days, following date of award.

B. Initial and Subsequent Meetings with COTR: The grantee will meet with the COTR and appropriate NHTSA staff at NHTSA's offices in Washington DC to discuss and refine the development, implementation, and evaluation of the project. The grantee will prepare a 20 to 30 minute presentation describing the project and will be prepare to answer questions from the COTR and others present at the briefing. After this initial meeting with the COTR, the grantee should meet at least once a year with the COTR in Washington DC at NHTSA's offices, or at a mutually agreed-to conference, to discuss the project's progress and results. These meetings will be a minimum of 4 hours in length. No fewer than three meetings should be proposed.

C. Revised Project Plan: If needed, the grantee will submit a revised project plan incorporating verbal and written comments from the COTR. This revised plan is due no more than one (1) month after the date of the initial meeting with COTR.

D. Draft Final Report: The grantee will prepare a Draft Final Report that includes a description of the project, issue addressed, program implementation (if revelant), analytic strategies, findings, and recommendations. With regard to technology transfers, it is important to know what worked and what did not work, under what circumstances, what can be done to enhance replication in similar communities, and what can be done to avoid potential problems for future replication of the project. This is true even if the applicant reviewed and documented existing programs. The grantee will submit a Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the Draft Final Report and provide comments to the grantee within 30 days of receipt of the document.

E. Final Report: The grantee will revise the Draft Final Report to reflect the COTR's comments. The revised final report will be delivered to the COTR 15 days before the end of the performance period.

F. Requirements for Printed Material: The print materials shall be provided in NHTSA in both camera-ready and appropriate media formats (disk, CD–ROM) with graphics and printing specifications to guide NHTSA's printing office and any outside organization implementing the program. Printing Specification follow.

a. Digital artwork for printing shall be provided to NHTSA on diskette (100MG Zip disk or 1GB Jaz disk). Files should be in current desktop design and publication programs, for example, Adobe Illustrator, Adobe Photoshop, Adobe Pagemaker, Macromedia Freehand, QuarkXPress. The grantee shall provide all supporting files and fonts (both screen and printers) needed for successful output, black and white laser separations of all pages, disk directory(s) with printing specifications provided to the Government Printing Office (GPO) on GPO Form 952 to guide NHTSA's printing office, GPO, and any outside organizations assisting with

program production. The grantee shall confer with the COTR to verify all media format and language.

b. Additionally, the program materials shall be submitted in the following format for placement on NHTSA's Web site on the World Wide Web.

- Original application format, for example, *pm5; *doc; *ppt; etc.
- HTML level 3.2 or later.
- A PDF file for viewing with Adobe Acrobat.

c. All HTML deliverables must be delivered on either a standard 3.5″ floppy disk or on a Windows 95 compatible formatted Iomegal zip disk and labeled with the following information:

- Grantee's name and phone number.
- Names of relevant files.
- Application program and version used to create the file(s).
- If the files exceed the capacity of a high density floppy, a Windows 95 compatible formatted Iomega zip disk is acceptable.

d. Graphics must be saved in Graphic Interchange Format (GIF) or Joint Photographic Expert Group (JPEB). Graphics should be prepared in the smallest size possible, without reducing the usefulness or the readability of the figure on the screen. Use GIF for solid color or black and white images, such as bar charts, maps, or diagrams. Use JPEG (highest resolution and lowest compression) for photographic images having a wider range of color or grey-scale tones. When in doubt, try both formats and use the one that gives the best image quality for the smallest file size. Graphic files can be embedded in the body of the text or linked from the body text in their own files: the latter is preferable when a figure needs to be viewed full screen (640 × 480 pixels) to be readable.

- Tabular data must be displayed in HTML table format.
- List data must be displayed in HTML list format.
- Pre-formatted text is not acceptable.
- Currently, frames are not acceptable.
- JAVA, is used, must not affect the readability or usefulness of the document, only enhance it.
- Table background colors may be used, but must not be relied upon (for example, a white document background with a table with colored background may look nice with white text, but the colored background doesn't show up on the user's browser the text shall be white against white and unreadable.)
- All HTML documents must be saved in PC format and tested on a PC before delivery.

e. During all phases of program development, draft program contents and materials shall be provided to the COTR, as appropriate, for approval and coordination within NHTSA.

f. All HTML deliverables rendered under this cooperative agreement must comply with the accessibility standards at 36 CFR 1194.22 which implements section 508 of the Rehabilitation Act of 1973, as amended. This standard is available for viewing at the Access Board Web site at: *http://www.access-board.gov/sec508/guide/1194.22.htm.* Unless otherwise indicated, the grantee agrees by signing this cooperative agreement that all deliverable will comply with the accessibility standards.

g. Final project briefing to NHTSA and a presentation to a national meeting: The grantee will deliver a briefing in Washington, DC at NHTSA's offices to the COTR and appropriate NHTSA staff to review the project implementation, evaluations, and results. This presentation shall last no less than 30 minutes and the grantee shall be prepared to answer questions from the briefing's attendees.

In consultation with the COTR, the grantee will attend a national meeting to deliver a presentation of the project and it effectiveness.

h. The Grantee will deliver an electronic Microsoft PowerPoint presentation that NHTSA staff shall be able to use to brief senior staff or pedestrian partners at various meetings and conferences.

3. During the effective performance period of the cooperative agreements awarded as a result of this announcement, the agreements shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreement, dated July 1995.

Issued on: May 20, 2003.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 03–13493 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13895; Notice 2]

Michelin North America, Inc., Grant of Application for Decision That a Noncompliance Is Inconsequential to Motor Vehicle Safety

Michelin North America, Inc., (Michelin) has determined that approximately 750 size 215/55R16 Energy MXV4 Plus tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on December 3, 2002, in the **Federal Register** (67 FR 72026). NHTSA received no comment on this application.

Michelin's Ardmore, Oklahoma plant produced approximately 750 tires with incorrect markings during the period from March 13, 2002, through March 27, 2002. The tires were marked: ''Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester.'' The correct marking required by FMVSS No. 109 is: ''Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester.''

The labeling requirements of FMVSS No. 109, *New Pneumatic Tires,* S4.3, paragraphs (d) and (e), mandate that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different. Also, each tire must be labeled with the generic name of each cord material used in the sidewall and tread.

Michelin stated that the noncompliant tires were actually constructed with more sidewall and tread plies than indicated on the sidewall marking (two tread and sidewall plies rather than one). Michelin believes that this noncompliance is particularly unlikely to have an adverse impact on motor vehicle safety and is ''clearly'' inconsequential to motor vehicle safety. Michelin stated that the noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR sections 571.109 and 119, part 567, part

574, and part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3, paragraphs (d) and (e), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or ''zipper'' rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. As a result, many light truck tires will be inflated outside a restraining device or safety cage where they represent a substantial threat to the technician. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the steel cord construction is properly identified on the sidewall, the technician will have sufficient notice.

In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is unlikely that the majority of consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. This labeling noncompliance has no effect on the performance of the subject tires.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

Issued on: May 23, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–13539 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the 23rd session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held June 30–July 4, 2003 in Geneva, Switzerland.

DATES: June 18, 2003, 9:30 a.m.–12:30 p.m., Room 3200–3204; July 16, 2003, 9:30 a.m.–12:30 p.m., Room 3200–3204.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Richard, International Standards Coordinator, or Mr. Duane Pfund, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the 23rd session of the UNSCOE and to discuss draft U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the 24th session of the UNSCOE. Topics to be covered during the public meetings include: (1) Harmonization of the Recommendations on the Transport of Dangerous Goods with the Globally Harmonized System of Classification and Labeling of Chemicals, (2) Hazards to the aquatic environment, (3) Procedures for incident reporting, (4) Evaluation of the United Nations packaging requirements, (5) Transport of Dangerous Goods in limited quantities and consumer commodities, (6) Miscellaneous proposals related to listing and classification and the use of packagings and tanks. The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32002.html*. This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/intstandards.htm*. RSPA's site provides additional information regarding the UNSCOE and related matters such as a summary of decisions taken at the 22nd session of the UNSCOE.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–13491 Filed 5–29–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34345 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights arrangement described in STB Finance Docket No. 34345 [1] to permit the trackage rights to expire on or about

[1] On April 25, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant limited overhead trackage rights to BNSF over UP lines between Port Chicago, CA, at milepost 41.3 on UP's Tracy Subdivision, and Stege, CA, at milepost 9.3 on UP's Martinez Subdivision, a distance of approximately 28.7 miles—6.3 on the Tracy Subdivision and 22.4 miles on the Martinez Subdivision. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34345 (STB served May 15, 2003). The trackage rights operations under the exemption were scheduled to begin on May 2, 2003.

May 22, 2003, in accordance with the agreement of the parties.

DATES: This exemption will be effective on May 23, 2003. Petitions to reopen must be filed by June 19, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34345 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on BNSF's representative: Michael E. Roper, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 23, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13537 Filed 5–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of 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, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund) of the Department of the Treasury is soliciting comments concerning an information collection required by the allocation agreement that will be entered into by the Fund and allocatees of the New Markets Tax Credit (NMTC) Program. The specific information collection relates to the section of the allocation agreement that requires an allocatee to provide notice to the Fund of the receipt of a Qualified Equity Investment. The Fund will publish a separate notice seeking public comments regarding other information collections contained in the allocation agreement (*e.g.*, use of QEI proceeds).

DATES: Written comments should be received on or before July 29, 2003, to be assured of consideration.

ADDRESS: Direct all comments to Matthew Josephs, Acting Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

FOR FURTHER INFORMATION CONTACT: A draft of the information collection may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Matthew Josephs, Acting Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

SUPPLEMENTARY INFORMATION: *Title:* New Markets Tax Credit Program—Allocation Agreement, Notice of Receipt of Qualified Equity Investment.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. No. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an allocation application to the Fund. Upon receipt of such applications, the Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities receiving an NMTC allocation must enter into an allocation agreement with the Fund. The allocation agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC allocation. The Fund will require each allocatee to use an electronic data collection and submission system, known as the allocation tracking system, to report on the information related to its receipt of a Qualified Equity Investment.

The Fund has developed the allocation tracking system to, among other things: (1) Enhance the allocatee's ability to report to the Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the Treasury Department's ability to monitor the issuance of Qualified Equity Investments to ensure that no allocatee exceeds its allocation authority, and to ensure that Qualified Equity Investments are issued within the timeframes required by the allocation agreement and the NMTC Program regulations; and (3) provide the Treasury Department with basic investor data which may be aggregated and analyzed in connection with NMTC Program evaluation efforts.

Current Actions: Selected allocatees for the NMTC Program.

Type of review: New.

Affected Public: Business or other for-profit institutions, not-for-profit institutions and State, local and tribal entities.

Estimated Number of Respondents: 66.

Estimated Annual Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 66 hours.

Requests 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. The specific section of the allocation agreement for which comments are sought is the reporting requirement that allocatees provide notice to the Fund, through the Fund's allocation tracking system, of the receipt of a Qualified Equity Investment. 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: Consolidated Appropriations Act of 2001, Pub. L. No. 106–554; 31 U.S.C. 321.

Dated: May 22, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–13574 Filed 5–29–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–38

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 Revenue Procedure 2003–38, Commercial Revitalization Deduction.

DATES: Written comments should be received on or before July 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Commercial Revitalization Deduction.

OMB Number: 1545–1818.

Revenue Procedure Number: Revenue Procedure 2003–38.

Abstract: Pursuant to § 1400I of the Internal Revenue Code, Revenue Procedure 2003–38 provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments, and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Average Time Per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hour: 200.

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: May 22, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–13580 Filed 5–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 30, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0165.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0165'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Financial Status Report, VA Form 5655.

OMB Control Number: 2900–0165.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 5655 is attached to first collection letters sent to debtors owing VA benefit debts. Submission of the completed form is voluntary on the part of the debtor unless he or she requests waiver of collection, makes a compromise offer, wishes to make installment payments or establish his or her inability to pay the debt under any circumstances. Federal employees subject to salary offset may use Form 5655 to support their contention that the proposed offset schedule would create extreme hardship. The information obtained is used to determine the financial status of the debtors.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2003, at pages 13363–13364.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,553 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,553.

Dated: May 16, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–13549 Filed 5–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approve collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine applicants' eligibility to receive a grant and/or per diem for programs to assist the homeless.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 29, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0554'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN.

e. Compliance Reports for Per Diem and Special Needs Grants. No form needed. May be reported to VA in standard business narrative.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA.

g. Compliance Reports for Technical Assistance Grants. No form needed. May be reported to VA in standard business narrative.

OMB Control Number: 2900–0554.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 10–0361 series, Homeless Providers Grant and Per Diem Program, will be used to determine applicants eligibility to receive a grant/or per diem payments which provide supportive housing/services to assist homeless veterans transition to independent living. The collected information will be used to apply the specific criteria to rate and rank each application; and to obtain information necessary to ensure that Federal funds are awarded to applicants who are financially stable and who will conduct program for which a grant and/or per diem award was made. If this data were not collected, VA would not be able to implement the provisions of Pub. L. 107–95.

Affected Public: Not-for-profit institutions—State, Local or Tribal Governments.

Estimated Annual Burden: 14,340 hours.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—3,500 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—2,000 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—3,000 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—4,000 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—1,500 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—250 hours.

g. Compliance Reports for Technical Assistance Grants—90 hours.

Estimated Average Burden per Respondent

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—35 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—10 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—20 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—20 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—5 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—10 hours.

g. Compliance Reports for Technical Assistance Grants—2.25 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,015.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—100.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code

Application, VA Form 10–0361–LSC—200.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—150.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—200.

e. Compliance Reports for Per Diem and Special Needs Grants—300.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—25.

g. Compliance Reports for Technical Assistance Grants—40.

Dated: May 16, 2003.
By direction of the Secretary.

Jacqueline Parks,

Specialist, Records Management Service.

[FR Doc. 03–13550 Filed 5–29–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
May 30, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL –7498–8]

RIN 2060–AK52

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: In this action, we are adopting final amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP) and to the rule which establishes criteria and procedures for equivalent emission limitations adopted pursuant to Clean Air Act (CAA) section 112(j). These final rule amendments establish a new timetable for the submission of section 112(j) Part 2 applications, which is based on the timetable we have agreed to follow for promulgation of the remaining NESHAP, and modify the content requirements for Part 2 applications. These final rule amendments also establish revised procedures for requests for applicability determination previously submitted under the section 112(j) rule, and for section 112(j) applications submitted by sources that previously obtained a case-by-case determination under CAA section 112(g). These final rule amendments also adopt various amendments to the NESHAP General Provisions governing startup, shutdown, and malfunction (SSM) plans, some of which were proposed by EPA pursuant to a settlement agreement in a judicial action concerning the prior amendments published on April 5, 2002.

EFFECTIVE DATE: May 30, 2003.

ADDRESSES: Docket No. OAR–2002–0038 (formerly A–2002–21) is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local permitting agency representative or the appropriate EPA Regional Office representative. For further information concerning the development of these rule amendments, contact Mr. Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Minerals and Inorganic Chemicals Group, C504–05, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, e-mail *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0038. 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 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 Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule 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 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 in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's promulgated rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

Industry Group: Source Category

Fuel Combustion

Combustion Turbines
Engine Test Facilities
Industrial Boilers
Institutional/Commercial Boilers
Process Heaters
Reciprocating Internal Combustion Engines
Rocket Testing Facilities

Non-Ferrous Metals Processing

Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Primary Magnesium Refining
Secondary Aluminum Production
Secondary Lead Smelting

Ferrous Metals Processing

Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quenching, Battery Stacks
Ferroalloys Production: Silicomanganese and Ferromanganese
Integrated Iron and Steel Manufacturing
Iron Foundries Electric Arc Furnace (EAF) Operation
Steel Foundries
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing

Alumina Processing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Refractories Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining

Oil and Natural Gas Production
Natural Gas Transmission and Storage
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution

Gasoline Distribution (Stage 1)
Marine Vessel Loading Operations
Organic Liquids Distribution (Non-Gasoline)

Surface Coating Processes

Aerospace Industries
Auto and Light Duty Truck
Large Appliance
Magnetic Tapes
Manufacture of Paints, Coatings, and Adhesives
Metal Can
Metal Coil
Metal Furniture
Miscellaneous Metal Parts and Products
Paper and Other Webs
Plastic Parts and Products
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing
Shipbuilding and Ship Repair
Wood Building Products
Wood Furniture

Waste Treatment and Disposal

Hazardous Waste Incineration
Municipal Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW) Emissions
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Uranium Hexafluoride Production

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Cellulosic Sponge Manufacturing
Chelating Agents Production
Chlorinated Paraffins
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Products Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Tanning and Finishing Operations
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Polyether Polyols Production
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production

Categories of Area Sources

Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine the section 112(d) regulation for your source category. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Only source categories listed in Table 1 for which standards have not been promulgated are affected by the section 112(j) regulation.

TABLE 1.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
10/30/03	Combustion Turbines. Lime Manufacturing. Site Remediation. Iron and Steel Foundries. Taconite Iron Ore Processing. Miscellaneous Organic Chemical Manufacturing (MON) [1]. Organic Liquids Distribution. Primary Magnesium Refining. Metal Can (Surface Coating). Plastic Parts and Products (Surface Coating). Chlorine Production. Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes) [2].
4/28/04	Industrial Boilers, Institutional/Commercial Boilers and Process Heaters [3] Plywood and Composite Wood Product Reciprocating Internal Combustion Engines [4] Auto and Light-Duty Truck (Surface Coating).
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters [5] Hydrochloric Acid Production [6].

[1] Covers 23 source categories, *see* Table 2 of this preamble.
[2] Two source categories.
[3] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.
[4] Includes engines greater than 500 brake horsepower.
[5] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.
[6] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives.
Alkyd Resins Production.
Maleic Anhydride Copolymers Production.
Polyester Resins Production.
Polymerized Vinylidene Chloride Production.
Polymethyl Methacrylate Resins Production.
Polyvinyl Acetate Emulsions Production.
Polyvinyl Alcohol Production.
Polyvinyl Butyral Production.
Ammonium Sulfate Production-Caprolactam By-Product Plants.
Quaternary Ammonium Compounds Production.
Benzyltrimethylammonium Chloride Production.
Carbonyl Sulfide Production.
Chelating Agents Production.
Chlorinated Paraffins Production.
Ethylidene Norbornene Production.
Explosives Production.
Hydrazine Production.
OBPA/1,3-Diisocyanate Production.
Photographic Chemicals Production.
Phthalate Plasticizers Production.
Rubber Chemicals Manufacturing.
Symmetrical Tetrachloropyridine Production.

Judicial Review. The amendments to the General Provisions and the section 112(j) provisions were proposed on December 9, 2002 (67 FR 72875). Today's action announces EPA's final decision concerning the amendments. Under section 307(b)(1) of the CAA, judicial review of these amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 29, 2003. Under section 307(d)(7)(B) of the CAA, only those objections to this rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged separately in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

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I. Background

A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit 10 tons/yr or more of any one HAP and 25 tons/yr or more of any combination of HAP.

The General Provisions in 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national air toxics standards. The General Provisions become

applicable to a CAA section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our practical experience in developing and implementing NESHAP, also know as maximum achievable control technology (MACT) standards, under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

B. CAA Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA included a new section 112(j), which is entitled ''Equivalent Emission Limitation by Permit.'' Section 112(j)(2) provides that the provisions of section 112(j) apply if EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category, for which the EPA failed to promulgate a section 112(d) standard, to submit a permit application 18 months after the missed promulgation deadline.

We first promulgated a rule to implement section 112(j) on May 20, 1994 (59 FR 26429). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our own further evaluation of the existing procedures (66 FR 16318, March 23, 2001). We then promulgated final amendments to the section 112(j) rule, along with our final amendments to the General Provisions (67 FR 16582, April 5, 2002).

C. The Sierra Club Litigation

We promulgated the final rule amending the NESHAP General Provisions and the requirements for case-by-case determinations under CAA section 112(j) on April 5, 2002 (67 FR 16582). The Sierra Club filed a petition seeking judicial review of that final rule on April 25, 2002, *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit). The Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to CAA section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with the Sierra Club concerning a settlement agreement. We reached initial agreement with the Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002. Under the proposed settlement, we agreed to propose a rule to make specified amendments to the General Provisions and section 112(j) rules no later than 2 months after signature and to take final action on the proposed amendments within 7 months after signature.

D. Review of Proposed Settlement Under CAA Section 113(g)

As required by section 113(g) of the CAA, EPA published a notice in the **Federal Register** affording interested persons an opportunity to comment on the terms of the proposed settlement in *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit) (67 FR 54804, August 26, 2002). In response to that notice, we received 110 timely comments, the vast majority of which opposed one or more provisions of the proposed settlement.

Virtually all of the commenters expressed concern about the practical consequences of a provision in the proposed settlement which required us to propose reducing the time between section 112(j) Part 1 and Part 2 applications from 24 months to 12 months. We agreed with the commenters that this approach would have resulted in wasteful expenditures by the applicants and the permitting agencies to prepare and to process applications which in all likelihood would never have been acted upon. Given the strong opposition to this approach reflected in the comments both by industry sources and organizations and by State and local permitting authorities, we were pleased when the Sierra Club agreed to discuss modifying the proposed settlement to establish an alternative timetable for submission of section 112(j) Part 2 applications.

The EPA and the Sierra Club then negotiated a revised settlement based on a new approach suggested by organizations representing State and local governments. In the revised settlement, we agreed to propose a schedule requiring that section 112(j) Part 2 applications for affected sources in those categories for which MACT standards were scheduled to be promulgated prior to May 15, 2002, be submitted by May 15, 2003, and section 112(j) Part 2 applications for all remaining source categories be submitted by 60 days after the scheduled promulgation date for the source category in question. We also agreed to propose the same amendments to the General Provisions concerning SSM plans which were set forth in the original settlement. The EPA and the Sierra Club executed a final settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency,* No. 02–1135 (DC Circuit), and filed it with the court on November 26, 2002.

E. Proposed Rule

Following execution of the final settlement agreement, we published a proposed rule effectuating its terms (67 FR 72875, December 9, 2002). In addition to the proposed amendments required by the settlement, we also proposed to revise a new recordkeeping provision concerning SSM plans we adopted in the April 5, 2002 final rule, and we requested comment on issues presented by the section governing the content of section 112(j) Part 2 applications and on certain other sections in the NESHAP General Provisions we amended in the April 5, 2002 final rule.

We received 73 public comment letters in response to our proposal. We have carefully evaluated all of these comments and have modified the amendments we proposed in certain respects. Our responses to some of the major comments we received, and the decisions we have made concerning appropriate final amendments to the NESHAP General Provisions and the section 112(j) rule, are discussed in the sections which follow.

II. Final Amendments to the General Provisions

A. Startup, Shutdown, and Malfunction Plans

1. The General Duty To Minimize Emissions

We proposed revisions in the language in 40 CFR 63.6(e)(1)(i) to correct a potential problem in interpreting the relationship between the general duty to minimize emissions established by that section and the compliance of a source with its SSM plan. The section in question was modified in the April 5, 2002 final rule because the prior language appeared to impose on a source a general duty to further reduce emissions even when the source is already in full compliance with the applicable MACT standard. We deemed this result to be unreasonable and made corresponding changes in the language of the rule.

However, when we made that change, we inadvertently adopted some language which could be construed as contrary to the policies regarding the relationship between the general duty to minimize emissions and SSM plans which we stated in the proposal preamble for the preceding amendments. The SSM plans must be drafted in a manner which satisfies the general duty to minimize emissions (40 CFR 63.6(e)(3)(i)(A)). Thus, compliance with a properly drafted SSM plan during a period of startup, shutdown, or malfunction will necessarily also constitute compliance with the duty to minimize emissions, even though compliance with the MACT standard itself during a period of SSM may not be practicable. When we proposed the preceding amendments, we stated explicitly that ''* * * compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions.'' (66 FR 16327, March 23, 2001).

The Sierra Club subsequently pointed out to us that the actual language of the section as promulgated could be construed to indicate that a facility that complies with its SSM plan—regardless of whether the plan is inadequate or improperly developed—thereby satisfies its general duty to minimize emissions. We did not intend this result. Such a construction could encourage abuse because SSM plans do not have to be reviewed or approved by the permitting authority before they take effect, and because such plans may also be revised by the owner or operator of the source without prior notice to the permitting authority. The revisions to 40 CFR 63.6(e)(1)(i) which we proposed in this rulemaking were intended to assure that this section would not be construed in this manner.

We received numerous comments from industry opposing the proposed revised language. In general, the commenters did not disagree with the general principles concerning the relationship between the general duty to minimize emissions and the compliance of a source with its SSM plan which we articulated in the proposal preamble. Rather, the commenters expressed concerns about the interpretation of the proposed language.

We believe that much of the concern expressed by the commenters is based on one alternative construction of the phrase ''to the levels required by the relevant standards,'' which replaced the phrase ''at least to the levels required by the relevant standards'' in several sections of the April 5, 2002 final rule. While we intended this phrase to mean that emissions must be minimized to the greatest extent which is practicable, unless and until the levels required by the applicable MACT standard are achieved, some commenters were concerned that this phrase would be construed to require that the standard be met at all times. While we believe that such a construction would be unreasonable in the context of the remainder of the rule, we do understand how the literal language could be construed in this manner. The parenthetical phrase which followed this language in one section of the April 5, 2002 final rule helped to mitigate the potential that readers might adopt this alternative construction. However, as we have explained, it also created the significant problem identified by the Sierra Club.

Many commenters suggested that we modify the language of the rule itself to more clearly establish those general principles which we stated in the proposal preamble. We agree with these commenters. Accordingly, we have adopted new language for § 63.6(e)(1)(i), which establishes the general duty to minimize emissions. This new language makes it clear that during a period of SSM, the general duty to minimize emissions requires the owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved.

Rather than restating these principles in other sections of the rule, we have instead cross-referenced the revised language of § 63.6(e)(1)(i) in § 63.6(e)(3)(i)(A) and § 63.6(e)(3)(vii)(B). This assures that the same principles concerning the duty to minimize emissions will also be applied in the drafting of an SSM plan and in determining whether a particular SSM plan requires revision. We believe that this combination of amendments is responsive to the concerns expressed by the industry commenters. However, it also achieves our original purpose by assuring that a source will not be considered to have satisfied the duty to minimize emissions merely because it has complied with the provisions of an inadequate SSM plan.

We note that the Sierra Club argued in its comments that the whole concept that a MACT standard does not apply during periods of SSM has a questionable legal basis, and that any exemption for such activities should be strictly limited to those instances where violation of emission limitations is ''unavoidable.'' We believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply, and we, therefore, disagree with the legal position taken by the Sierra Club. However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided.

The general duty to minimize emissions requires that owners or operators review their SSM plans on an ongoing basis and make appropriate improvements to assure that excess emissions are avoided. Our experience in another regulatory context illustrates how sources and regulatory authorities can work together to improve procedures for SSM events. We have been working with the petroleum refining industry to reduce the number and significance of refinery acid gas flaring episodes, and a refinery flaring reduction protocol has now been implemented at about 35 refinery facilities nationwide. The protocol helps sources to determine the root cause of certain flaring events, determine the corrective action(s) for such problems, and then to implement the corrections.

Use of this protocol has resulted in a dramatic drop in the number of SSM events. For example, one company reduced the percentage of time in flare at its refineries (including all startup, shutdown, maintenance, upset activities) from 29.0% in 1998 to 1.6% in 2002. The EPA intends to develop guidance this year that will highlight the best practices that have been implemented by various refiners around the country to improve their response to SSM events. We believe that the experience we have gained in this process may also be beneficial to other facilities as they work to improve the quality and comprehensiveness of their SSM plans.

2. Public Access to SSM Plans

We also proposed some changes to 40 CFR 63.6(e)(3)(v), the section that governs submission of SSM plans to the EPA Administrator, and to the State or local permitting authorities which operate as the Administrator's designated representatives. That section provides that the current SSM plan must be made available upon request to the Administrator for ''inspection and

copying.'' The ''Administrator'' is defined to include a State which has received delegation and is therefore the Administrator's ''authorized representative'' (40 CFR 63.2).

We stated in the proposal preamble for the previous rulemaking (66 FR 16326, March 23, 2001) that the permit writer or the Administrator may also require submission of the SSM plan. However, Sierra Club observed during settlement discussions that the rule as amended in April 5, 2002 did not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request.

Because SSM plans are required for facilities subject to CAA section 112, they clearly are covered by CAA section 114(a). Therefore, to address the concern expressed by Sierra Club, we have revised the rule to make it clear that the owner or operator of an affected facility is required to submit its SSM plan to the Administrator or the permitting authority upon request. We also note that SSM plans are considered to be submitted to the Administrator under CAA section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)). Under CAA section 114(c), any plan that is submitted to EPA or the permitting authority must also be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905.

During settlement discussions, the Sierra Club also expressed concern that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public. We agreed to propose some revisions to the rule to facilitate better public access. We proposed to require sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and each time it is subsequently revised.

Many commenters vigorously opposed these proposed amendments. A number of industry commenters argued that there is no general obligation to provide public access to SSM plans, and that only those plans that the States or EPA actually elect to obtain from the sources must be made available to the public. These commenters argued that EPA has incorrectly construed the SSM plan as an integral part of the permit documentation that must be made available to the public under CAA sections 114(c) and 503(e).

Industry commenters also argued that requiring routine submission of SSM plans would be very burdensome for sources, because SSM plans are often fully integrated into other operating procedures at a source, and production of a complete SSM plan might, therefore, require copying and compilation of other documents. Commenters also expressed concern about the burden on sources associated with identification and segregation of claimed Confidential Business Information (CBI), and the danger that permitting authorities might inadvertently disclose such information. Commenters also argued that routine submission of SSM plans would be burdensome for the permitting authorities.

A number of commenters suggested that appropriate public access to SSM plans could be assured by a less burdensome approach, focusing on the specific problems with the current rule that we identified in the proposal. Some commenters suggested that EPA could adopt new regulatory language specifically requiring sources to submit SSM plans when requested by the permitting authority. Others suggested that EPA provide clearer guidance to permitting authorities indicating that they are responsible and have the authority to obtain SSM plans when requested by the public. We think that these ideas are constructive.

We acknowledge that adopting a requirement that copies of SSM plans be routinely submitted to the permitting authorities would be burdensome. In particular, we think that significant resources would be expended on the process of identifying and segregating claimed CBI in each plan. We also acknowledge that the proper maintenance of these extra records would necessarily involve additional resource expenditures by the permitting authorities.

We have concluded that these additional burdens are not necessary to assure appropriate public access to SSM plans. As suggested by some commenters, we have decided instead to adopt a less burdensome approach tailored to the specific problems we identified in the proposal.

We believe that SSM plans will be most effective in minimizing emissions during periods of startup, shutdown, or malfunction if they are fully integrated with the detailed process and operating procedures of a facility. We also recognize that these types of procedures may contain trade secrets and other sensitive information, and that the integration of SSM plans with these other procedures may make it more difficult and costly for a facility to redact them in a way that would be suitable for public disclosure. We do not wish to discourage facilities from integrating SSM plans with other procedures.

On the other hand, we recognize that there will sometimes be substantial public interest in the details of SSM plans. There is increasing concern about emissions that may occur during a period of startup, shutdown, or malfunction. In addition, SSM plans may include basic information about when the emission limitations in a MACT standard apply to a particular facility and when they do not. To strike the right balance between public disclosure and the need to make SSM plans comprehensive and effective, we have adopted the following approach in this final rule.

First, we believe that the permitting authorities, acting on behalf of the public, can and should play the primary role in reviewing SSM plans and ensuring that affected sources take the necessary steps to minimize emissions during periods of startup, shutdown, or malfunction. We know that some permitting authorities review these plans during the process for initial permit issuance. In other instances, we expect that permitting authorities will review SSM plans in conjunction with inspections and other site visits, when they can more readily observe how the SSM plan relates to other operational procedures at the facility. In addition, under the language we are adopting, owners or operators must promptly submit a copy of any SSM plan (or any portion thereof) maintained at the affected source if requested by the permitting authority.

If a member of the public wishes to review the SSM plan for a particular facility, or a specific portion of that plan, he or she can ask that the permitting authority request the plan from the facility. We are also adding language requiring that the permitting authority request that the owner or operator submit to the permitting authority a particular SSM plan (or the relevant portion thereof) whenever a member of the public makes a specific and reasonable request to examine or receive a copy. Upon receipt of such a request, the permitting authority should take prompt action to make the plan available to the requestor. We also expect that, upon receiving a request that is insufficiently specific or may be overly broad, the permitting authority will work with the requestor to clarify the request and to assure that it is focused on the requestor's specific needs or interests.

As in our proposal, the owner or operator may elect to submit the

requested SSM plan in an electronic format, and any portion of the plan that is claimed to be CBI entitled to protection under CAA section 114(c) or the Trade Secrets Act must be clearly designated in the submission. Moreover, we want to encourage all parties to adopt procedures for providing public access to SSM plans which avoid unnecessary burdens or delays. Therefore, if an owner or operator and a requestor both agree that it would be more expedient or convenient for the requestor to examine the SSM plan (or a portion thereof) at the facility where it is maintained, this approach could be utilized instead of requiring submission of the SSM plan to the permitting authority. This on-site inspection procedure would be most practicable in those instances where the owner or operator has concluded that it is not necessary to redact claimed CBI when the plan is being examined at the facility that maintains it.

We think this approach assures appropriate public access to SSM plans, but dramatically reduces the aggregate expenditure of resources by sources and permitting authorities. We recognize that this approach could result in some additional delay before a member of the public could obtain a copy of the non-confidential portions of an SSM plan. However, we think that requiring routine submission of every SSM plan, without regard for whether any member of the public will ultimately seek access to it, involves a resource burden which is disproportionate to the time which may be saved when a specific plan is actually requested by a member of the public.

As for the concern of some commenters that claimed CBI information might be inadvertently disclosed, we think this is less probable when SSM plans must be submitted only on demand rather than routinely. If a submitter knows that the non-confidential portions of a plan will definitely be disclosed, we believe the submitter will be more likely to do a good job of segregating claimed CBI and preparing to properly substantiate its claim.

Some commenters expressed concern about the Homeland Security implications of public access to SSM plans. It may be that some information in a particular SSM plan could be sensitive from a Homeland Security perspective. In most instances, we think that such sensitive information would also be entitled to confidential treatment under CAA section 114(c). However, we note that the entire Federal government is presently reviewing public access requirements to assure that they are compatible with Homeland Security, and it is possible that we may in the future propose other changes in public access to SSM plans as part of this important effort.

3. Reporting Requirements

During the April 5, 2002, rulemaking concerning revisions to the General Provisions and section 112(j) rules, we received a comment from representatives of the State and local permitting authorities indicating that it would assist them in performing their oversight function if facilities were required to include the number and a description of all malfunctions that occurred during the prior reporting period in the required semiannual report. In response to that comment, we added a new reporting obligation to the language governing periodic SSM reporting in 40 CFR 63.10(d)(5)(i). However, the language we added was not limited to malfunctions and required that the facility report ''the number, duration, and a brief description of each startup, shutdown, and malfunction.'' We later concluded that the inclusion of startups and shutdowns in this reporting requirement was unnecessary and burdensome, and we proposed to delete these events from this provision.

Many commenters supported that proposal. The Sierra Club opposed the deletion of startups and shutdowns from this reporting requirement, arguing that sources might improperly define events as startups and shutdowns. We consider this type of abuse unlikely, and we do not believe in any case that the routine reporting of all startups and shutdowns would be particularly helpful in preventing it.

In some industries, startup and shutdown events are numerous and routine. So long as the provisions of the SSM plan are followed, there does not appear to be any real utility in requiring that each individual startup and shutdown be reported or described. As many commenters noted, in those instances where a startup or shutdown includes actions which do not conform to the SSM plan and the standard is exceeded, the facility is otherwise required to promptly report these deviations from the plan.

Some commenters objected to our retention of the new malfunction reporting requirement. These commenters argue that a requirement to report all malfunctions is duplicative of other requirements, except in those instances where an SSM plan was followed during an event and no excess emissions occurred. We do not agree with these commenters that the malfunction reporting requirement should be entirely eliminated, but we have concluded that its scope can be narrowed.

With respect to malfunctions, the rule expressly requires that the SSM plan must be revised by the facility if there is an event meeting the characteristics of a malfunction which is not addressed by the plan (40 CFR 63.6(e)(3)(vii)). At the time of proposal, we believed that reporting of all malfunctions is necessary to assure that this requirement is satisfied. However, after reviewing the comments and evaluating this issue in the context of the rule as a whole, we believe that the problem of identifying new kinds of malfunctions which would require revision of the SSM plan is adequately addressed by other provisions in the rule. If a type of malfunction is not addressed by the current SSM plan, we believe that any actions taken during such a malfunction cannot be reasonably construed as actions consistent with the plan and that such actions would otherwise be reportable under § 63.10(d)(5)(i) or § 63.10(d)(5)(ii). We discuss these reporting provisions further below.

However, we also agree with a comment by the Sierra Club that reporting of malfunctions would help permitting authorities determine whether sources are attempting to circumvent the standard by improperly defining events as malfunctions. To prevent this type of potential abuse, we do not think that all malfunctions need to be reported. Rather, we think this problem can be addressed by requiring that the affected source report only those malfunctions which occurred during the reporting period and which caused or may have caused an emission limitation in the relevant standard to be exceeded. Thus, we have decided to retain the requirement that the owner or operator report malfunctions in the periodic report, but to limit its scope to those malfunctions which caused or may have caused an emission limitation in the relevant standard to be exceeded.

Moreover, we stated in the proposal that minor or routine events that do not have a significant impact on the ability of a source to meet the standard need not be classified as a malfunction, addressed by the SSM plan, or included in periodic reports. We think there is no reason to classify an event as a malfunction if it does not cause, or have the potential to cause, the emission limitations in an applicable standard to be exceeded.

A number of commenters requested that we make this policy clear in the regulatory language, rather than only in the preamble. These commenters

suggested that the definition of malfunction could be revised to accomplish this. We think this is a good idea, and we have revised the definition accordingly. We think that this change will make it clear that events that do not cause, or have the potential to cause, emission limitations in an applicable standard to be exceeded need not be included either in the SSM plan or in periodic malfunction reports.

We note that 40 CFR 63.10(d) describes two distinct types of SSM reports. Periodic SSM reports are submitted on a semiannual basis and are described in § 63.10(d)(5)(i). Immediate SSM reports which are triggered by a particular event, and which require an oral or facsimile report within 2 working days and a written report within 7 working days, are described in § 63.10(d)(5)(ii). During our review of the comments concerning the various SSM reporting provisions, we realized that there is an unresolved conflict between an amendment we made in the April 5, 2002 final rule and the language of 40 CFR 63.10(d) as it is currently codified. Although we amended 40 CFR 63.6(e)(3)(iv) to limit the immediate reporting obligation for actions which are not consistent with the SSM plan to those instances where the source exceeds the relevant emission standard, we did not make a similar conforming change in 40 CFR 63.10(d)(5)(ii). This discrepancy was also specifically identified by one commenter. We are amending § 63.10(d)(5)(ii) to correct this problem.

We are also making another conforming amendment in § 63.10(d)(5)(i). Since immediate reports of actions not consistent with the SSM plan are not required if the emission limitations in the standard are not exceeded, we believe that the periodic SSM report should identify any instances in which actions taken were not consistent with the plan but no emission limitations were exceeded.

4. Correction of Plan Deficiencies

We proposed another small change to 40 CFR 63.6(e)(7). The rule as amended in April 5, 2002 provides that EPA or the permitting authority ''may'' require that an SSM plan be revised if certain specified deficiencies are found. In the proposal, we stated that we could not foresee any circumstance where revision of an SSM plan should not be mandatory if it has been specifically found to be deficient under one of the criteria set forth in this section. Therefore, we proposed to change the language to make such revisions mandatory rather than discretionary.

Some commenters objected to this proposal, but their principal concern was that the criterion requiring the SSM plan to satisfy the duty to minimize emissions might be interpreted in a manner contrary to the other general principles we have articulated. We believe this concern is fully resolved by the amendments to the provisions concerning the general duty to minimize emissions which we are adopting and described above.

Some commenters also argued that the current practice of giving permitting authorities discretion concerning whether to require changes in an SSM plan works well, and there is no reason to change it unless a problem can be demonstrated. We find this argument unpersuasive. If a permitting authority has specifically found that a plan is deficient according to one of the criteria, we see no reason why it should not be mandatory for corrective action to be taken.

B. Other Sections of the General Provisions

1. Monitoring Definition

During the April 5, 2002, rulemaking, one commenter suggested that we revise the definition of ''monitoring'' in 40 CFR 63.2 to include the phrase ''or to verify a work practice standard.'' There are times when we must adopt a work practice standard under CAA section 112(h) rather than an emission standard under CAA section 112(d), and compliance with such a work practice standard is sometimes verified by activities which are similar in character to those required to monitor compliance with an emission standard. Therefore, we thought that the suggested revision was a sensible one. However, because the additional language was not originally proposed by EPA, we decided to take additional comment concerning this language.

One industry commenter supported the revised monitoring definition. Other commenters expressed concern that the revised definition could make changes in work practice verification a significant permit modification, or that the revised definition might require verification of work practices beyond the procedures specified in a particular MACT standard. We do not intend either of these results, and we are not persuaded that the revised definition will cause either of these problems. Therefore, we have retained the revised definition without change.

2. Combined Compliance Reports

In the April 5, 2002, rulemaking, we also made a small change in the language of 40 CFR 63.9(h)(2)(ii), by adding the phrase ''(or activities that have the same compliance date)'' in response to a industry commenter. The commenter was concerned that separate compliance reports might be required for compliance obligations that have the same date and requested the option of filing a single compliance status report covering multiple compliance obligations. Because the new language we adopted was not originally proposed by EPA, and some questioned whether it clearly achieved the intended purpose, we decided to request additional comment concerning this revision and potential alternatives.

All commenters on this change agreed with our original intent in making the change, but some commenters suggested that the language is confusing and proposed alternative language. We have adopted new language for § 63.9(h)(2)(ii) which is similar to the alternative language suggested by one of these commenters.

III. Final Amendments to the Section 112(j) Provisions

A. General Applicability

In the proposed rule, we stated our intent to include new language concerning general applicability in the final amendments to the section 112(j) rule. We proposed to state explicitly that no further process to develop a case-by-case MACT determination under section 112(j) is required for any source once a generally applicable Federal MACT standard governing that source has been promulgated. In our view, it is obvious that no further process to implement section 112(j) with respect to a particular source is required or appropriate once a Federal standard governing that source has been promulgated under CAA section 112(d) or 112(h). All commenters who addressed this issue supported our proposal. A new paragraph effectuating it has been added to the general applicability provisions as 40 CFR 63.50(c).

Just as it is obvious that all activities to develop an equivalent emission limitation under CAA section 112(j) should end following promulgation of a generally applicable Federal standard, it is also clear from the statutory language that any final equivalent emission limitation which may be issued prior to adoption of such a standard is itself an enforceable Federal requirement, which remains in force until revised or supplanted pursuant to section 112(j)(6) and 40 CFR 63.56. Although it is clear from the statute that permitting authorities are expected to utilize the

title V permitting procedures to adopt and issue an equivalent emission limitation under section 112(j), it is also clear that the authority to establish and require compliance with such a limitation is provided by section 112(j) itself rather than title V. Section 112(j)(4) requires that each equivalent emission limitation be submitted for review and approval by EPA under the procedures established by CAA section 505, and upon final adoption at the time of permit issuance such an equivalent emission limitation is a binding order which may be enforced directly under Federal law. An equivalent emission limitation takes effect upon issuance of the permit containing it under section 112(j)(5), and it remains applicable to the source until it is revised or superceded, regardless of the subsequent status of the permit in which it was initially contained. For the sake of clarity, we have included additional general applicability language in 40 CFR 63.50(d) which embodies these principles.

B. New Schedule for Part 2 Applications

Under our final settlement agreement with the Sierra Club, we proposed to replace the existing schedule for submission of section 112(j) Part 2 applications (also referred to as Part 2 MACT applications or simply Part 2 applications), under which most Part 2 applications would have been due on May 15, 2004, with a new schedule establishing a specific deadline for submission of all Part 2 applications for all affected sources in a given category or subcategory. With respect to those categories or subcategories for which MACT standards are scheduled to be promulgated after this rulemaking is complete, we proposed specific Part 2 application deadlines which are 60 days after each respective scheduled promulgation date. For those categories or subcategories for which MACT standards were scheduled to be promulgated while this rulemaking was pending, we proposed a Part 2 application deadline of May 15, 2003. However, because all of the standards scheduled to be promulgated during this rulemaking process have in fact been promulgated, there is no need to take any further action concerning the proposed Part 2 application deadline for those categories.

We note that commenters were generally supportive of the new approach to scheduling of section 112(j) Part 2 applications which we proposed. We agree with commenters that the proposed schedule will permit us to avoid a wasteful expenditure of public and private resources, so long as there are no further delays in promulgation of the remaining MACT standards. We note also that the prompt and significant consequences if a promulgation deadline is missed will create new incentives for EPA and the other stakeholders to assure that the agreed promulgation deadlines are met.

The Part 2 application deadlines which we proposed for each category or subcategory were based on a separate agreement in principle we had reached with the Sierra Club on a schedule for promulgation of all remaining MACT standards which were included in the original schedule established pursuant to CAA section 112(e)(1) and 112(e)(3). While this rulemaking was pending, this agreed schedule was incorporated in a proposed consent decree and filed in *Sierra Club* v. *Whitman,* 01–1337 (D.D.C.). On March 27, 2003 (68 FR 14976), we published a notice pursuant to CAA section 113(g) affording interested persons 30 days to submit comments concerning the proposed consent decree. We have now reviewed all timely comments received concerning the proposed consent decree and have determined that there is no basis at this time for modification of the schedule incorporated in that decree.

We note that many commenters on this rulemaking opposed the promulgation schedule for particular MACT standards. We received comments arguing that the promulgation schedule should be extended for the MACT standards for Brick and Structural Clay Products, Combustion Turbines, Iron and Steel Foundries, Taconite Iron Ore Processing, Miscellaneous Organic Chemical Manufacturing (MON), and Metal Can Surface Coating. We understand why these comments were submitted on this rulemaking since the notice providing an opportunity to comment on the proposed consent decree had not been published at the time they were submitted. However, we also believe that the most appropriate context for consideration of these comments is the review of the proposed consent decree under CAA section 113(g). Accordingly, we have deemed all comments submitted on this rulemaking concerning the schedule for promulgation of particular MACT standards to also be comments concerning the proposed consent decree in *Sierra Club* v. *Whitman.* Although some commenters complained that they were denied due process or otherwise prejudiced by the failure of EPA to provide a comment opportunity concerning that consent decree, these objections are now moot in view of the fact that their comments have been considered both in this rulemaking and as part of the section 113(g) process.

In general, we believe that it is incumbent on EPA to issue all MACT standards for which the mandatory statutory promulgation date has already passed as rapidly as is practicable. We also believe that EPA is in the best position to evaluate those tasks that remain and the resources that are available to accomplish those tasks and then to establish an appropriate schedule for promulgation of overdue standards. We respectfully disagree with those commenters who argue that EPA will be unable to adhere to the agreed schedule for promulgation of particular standards.

After considering all of the comments, we have decided to adopt the schedule for section 112(j) Part 2 applications with respect to MACT standards that have not yet been promulgated, exactly as it was proposed. We have added appropriate implementing language and related tables to 40 CFR 63.52(e)(1).

Many commenters expressed concern about the possibility of additional delays in the promulgation of MACT standards and requested that EPA provide advance notice if it expects to miss one of the promulgation deadlines in the consent decree. As we stated in the proposal, we recognize that the schedule for submission of section 112(j) Part 2 applications leaves relatively little time for sources to prepare and submit such applications if a particular promulgation deadline is missed. In recognition of the tight time frames, we will try to provide prompt advance notice to affected sources and to permitting authorities if we have reason to believe that an impending promulgation deadline for a particular MACT standard will not be met.

Many commenters also requested that EPA extend the corresponding Part 2 application deadline in the event that the date for promulgation of a MACT standard in the consent decree is itself extended. We note that the dates we are adopting in this rulemaking for submission of Part 2 applications for particular categories and subcategories cannot be made automatically contingent on the content of a consent decree which has not itself been codified. We do not expect to consider any future revisions to the schedule for submission of Part 2 applications unless the schedule set forth in the consent decree is itself modified. If the deadline for promulgation of any MACT standard which appears in the consent decree is extended by the District Court in accordance with the provisions of that decree, we will consider at that time whether any corresponding adjustment

in the schedule for Part 2 applications set forth in this rule is necessary and appropriate. If we conclude that a change in the schedule for Part 2 applications is warranted, we will consider the use of expedited procedures including direct final rulemaking.

C. Requests for Applicability Determination

In the proposed rule, we noted that some additional structural changes in the section 112(j) rule are required to assure that the new schedule for Part 2 applications is as uniform as practicable for the sources in a given category or subcategory. To achieve this uniformity, we proposed certain changes in the procedures for those sources which have previously submitted a request for applicability determination under 40 CFR 63.52(e)(2)(i).

In the section 112(j) rule as amended on April 5, 2002, § 63.52(e)(2)(i) established a process by which major sources could request that the permitting authority determine whether or not specific sources at their facility belong in any category or subcategory requiring a case-by-case determination under section 112(j). All requests for applicability determination were due at the same time as the section 112(j) Part 1 applications (also referred to as Part 1 MACT applications or simply Part 1 applications) on May 15, 2002. Under the old procedures, a negative determination by the permitting authority concerning such a request meant that no further action was required, while a positive determination meant that the applicant was required to submit a Part 2 application within 24 months.

We lack precise information concerning how many requests for applicability determination were submitted to permitting authorities on or before May 15, 2002, but we believe that hundreds of such requests are pending. We know that some of these requests reflected genuine uncertainty concerning the scope of the activities or equipment governed by a particular category or subcategory. For some of these requests, the subsequent issuance of a proposed MACT standard or other subsequent events may have resolved such uncertainty. However, we also believe that many of these requests were filed merely because the filing of such a request operated to defer the deadline for submission of a Part 2 application.

To reconcile the processing of pending requests for applicability determination with the new uniform schedule for Part 2 applications, we proposed that each affected source which still wishes to pursue a previously filed request for applicability determination under 40 CFR 63.52(e)(2)(i) be required to resubmit and supplement that request within 60 days after EPA publishes final action in this rulemaking, or within 60 days after EPA publishes a proposed MACT standard for the category or subcategory in question, whichever is later. We proposed to delay the requirement to resubmit and supplement a request for applicability determination until after a proposed MACT standard is available because our experience tells us that most uncertainties regarding applicability can be resolved by examining the specific applicability language in the proposed MACT standard. We also proposed to require that each resubmitted request for an applicability determination be supplemented to specifically discuss the relation between the source(s) in question and the applicability provision in the proposed MACT standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. Finally, we proposed to require that the permitting authority act upon each resubmitted and supplemented request for applicability determination within an additional 60 days after the applicable deadline for the resubmitted request.

Comment on our proposals concerning processing of requests for applicability determination was more limited than on many other elements of our proposal. Some commenters requested that we provide for extensions of the deadline for action by the permitting authority. We understand that the time frame for action on a resubmitted request for applicability determination by the permitting authority is an expedited one, but we believe that extending this time frame would undermine our efforts to establish a single uniform schedule for Part 2 applications. We are hopeful that sources will act in a responsible manner and will resubmit only those requests for which genuine unresolved applicability issues remain after publication of a proposed MACT standard. This is a reasonable expectation because the procedural incentives for submission of such requests which existed previously will be eliminated. We also think that the availability of a proposed MACT standard, and the mandatory supplementation of the resubmitted request to address the effect of that proposed standard, should assure an adequate record for expedited decisions by the permitting authorities on those requests that are resubmitted.

Some commenters requested that we establish a presumption of negative applicability if the permitting authority does not make a timely decision concerning a resubmitted request. We disagree with this concept because it would establish a substantial new incentive for a source to resubmit a pending request, regardless of whether there are any genuine and significant remaining questions regarding applicability. However, we also believe it would not be appropriate to establish a presumption of positive applicability if the permitting authority does not act in a timely manner on a resubmitted request. This would penalize those sources who sincerely believe that they are not covered by the proposed rule, but are merely seeking confirmation of that conclusion by the permitting authority. We intend the absence of either a negative or a positive presumption to create a strong incentive for a source to work closely with the permitting authority to resolve any genuine applicability issues in a timely manner.

Several commenters requested that EPA make provision for the submission of new requests for applicability determination. We do not believe that the creation of a new adjudicatory process of this type in this rulemaking is either appropriate or practical. However, we encourage those sources that have new questions concerning the applicability of a proposed MACT standard to their operations or equipment to seek guidance from responsible personnel at the permitting authority and the appropriate EPA Regional Office.

One commenter requested that we make it clear that any decision by a permitting authority concerning a request for applicability determination is null and void once a final MACT standard has been promulgated. The commenter noted that a determination of applicability based on the language of the proposed standard may not always correctly anticipate the ultimate applicability of the final promulgated standard. We agree with this comment. Requests for applicability determination submitted under 40 CFR 63.52(e)(2)(i) are intended solely to determine whether a source must submit a section 112(j) application, not to resolve applicability issues which may arise in other contexts. As we discussed in the section concerning general applicability above, no further process to develop an equivalent emission limitation under section 112(j) is necessary or

appropriate once a generally applicable Federal standard has been promulgated.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for applicability determination as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(i) which effectuates this decision.

As we noted in the proposal, those major sources which elect to resubmit requests for applicability determination with respect to sources that may be governed by one of the MACT standards which are scheduled to be promulgated by August 31, 2003, may not be entitled to receive a determination by the permitting authority on the resubmitted request until shortly after the scheduled promulgation date. If such a standard is delayed, and there is no negative determination by the permitting authority on the resubmitted request, the Part 2 application for sources within the category in question will be due on October 30, 2003. This tight time frame underscores the importance of careful coordination between such sources and the permitting authority if it appears that a MACT standard will be delayed. As discussed above, EPA will endeavor to provide timely information to affected sources and permitting authorities if it becomes apparent that the promulgation schedule for any of the remaining MACT standards will not be met.

D. Prior Section 112(g) Determinations

As part of our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, we also proposed some changes to the procedures governing CAA section 112(j) applications for those sources which have previously received a case-by-case determination pursuant to CAA section 112(g). To understand the effect of this proposal, it is helpful to review the substantive relationship between these separate statutory requirements.

In general, we anticipate that emission control requirements established as part of a previous case-by-case determination under section 112(g) will subsequently be adopted by the permitting authority to satisfy any applicable 112(j) requirements as well. This is because the determination required for any sources subject to CAA section 112(g) is supposed to be based on new source MACT, and the subsequent application of section 112(j) requirements to those same sources will be based on existing source MACT. Moreover, to assure that inconsequential differences in emission control do not result in unduly burdensome sequential case-by-case determinations, the section 112(j) rule requires the permitting authority to adopt any prior case-by-case determination under section 112(g) as its determination for the same sources under section 112(j) if it ''determines that the emission limitations in the prior case-by-case determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j).'' *See* 40 CFR 63.52(a)(3), (b)(2), and (e)(2)(ii).

Under the rule as it was amended on April 5, 2002, sources which had previously obtained a case-by-case determination under CAA section 112(g) were generally required to submit a request for an ''equivalency determination'' to decide if the applicable section 112(g) requirements are ''substantially as effective'' as the requirements which would otherwise apply under section 112(j). As explained above, we believe that this determination will generally be positive. However, the rule as amended on April 5, 2002 provided that, if such a determination were negative, the source would then be required to submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the old language are required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications.

Thus, we proposed to adopt the Part 2 application deadline for a given category or subcategory as the final deadline for submission of a request for an ''equivalency determination'' by any affected source that previously obtained a case-by-case determination under CAA section 112(g). Those sources who submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we also proposed to construe all requests for an equivalency determination, regardless of when they were submitted, as a section 112(j) Part 2 application as well.

Under the amendments we proposed, the permitting authority must first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of case-by-case requirements pursuant to section 112(j). This process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

In the proposal, we explained that this revised process would not impose any new burden on sources or permitting authorities, because the permitting authority should already have all of the information required for a Part 2 application in any instance where it is already administering section 112(g) requirements applicable to the same source.

As in the case of requests for applicability determination, relatively few comments were received concerning this element of our proposal. Commenters generally accepted our view that a source which has already received a case-by-case determination under section 112(g) should not need to submit additional information in a section 112(j) application. A couple of commenters requested that the deadline for submission of a request for an equivalency determination be delayed if the promulgation of a MACT standard is delayed. Since we are proposing that the deadline for submission of requests for an equivalency determination be the same as the deadline for Part 2 applications, our discussion above of the effect of potential delays applies equally to this issue.

After reviewing all of the comments, we have decided to adopt amendments to the procedures for requests for equivalency determination exactly as we proposed them. We have added new language to 40 CFR 63.52(e)(2)(ii) which effectuates this decision.

E. Later Part 1 Applications

In drafting new language to effectuate our amendments to the section 112(j) rule, we identified one additional conforming change in the prior rule language which is necessary. There are a few instances where a source may be required to submit a Part 1 application meeting the requirements of 40 CFR 63.53(a) for the first time on a date which is after the otherwise uniform date for submission of Part 2 applications which we are establishing. This may occur under 40 CFR 63.52(b) when new emission units are installed at a major source, when there is an increase in the potential to emit that causes an area source to become a major source, or when EPA establishes a lesser quantity emission rate that causes an area source to become a major source. This may also occur under 40 CFR 63.52(c) if a source that has previously obtained a section 112(j) determination changes the equipment or activities which were previously covered by that determination.

We consider it relatively unlikely that any of these provisions will be triggered, even if there is a delay in the promulgation of one or more MACT standards which results in submission of some Part 2 applications. However, in the event that any Part 1 applications must be submitted for the first time after

the deadline for submission of Part 2 applications, we think it is appropriate to provide an additional 60 days for submission of a Part 2 application after the applicable deadline for the Part 1 application. We have added another sentence to 40 CFR 63.52(e)(1) which addresses this matter.

F. Content of Part 2 Applications

We intend to meet the obligations we will be assuming under the consent decree in *Sierra Club* v. *Whitman* to promulgate the remaining MACT standards in a timely manner. If we succeed in promulgating all remaining MACT standards by the applicable deadlines, there will be no need for submission of any Part 2 applications. However, we also made it clear in the proposed rule that we want to minimize any unnecessary burdens associated with the submission of Part 2 applications if such applications do become necessary. We do not want to require the submission of any information which is not truly necessary to prepare for potential issuance of case-by-case MACT determinations. To that end, our proposal included some general guidance concerning the relationship between Part 2 applications and an applicable proposed MACT standard, and we also asked some additional questions intended to assist us in further limiting any unnecessary burden associated with Part 2 applications.

In our proposal, we stated that we think it is reasonable for an affected source submitting a Part 2 application to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also stated that applicants could reasonably limit the information they submit concerning HAP emissions to those specific HAP or groups of HAP which would be subject to actual control in the applicable proposed MACT standard. Commenters were generally supportive of these principles. Rather than merely providing guidance, we have decided to revise the language of 40 CFR 63.53(b) to expressly incorporate these principles.

Many commenters argued that the burden of compiling a Part 2 application could be diminished by permitting cross-referencing of various other documents. We agree generally with this concept, although we think that the specific information which is being cross-referenced needs to be clearly identified and the information being cross-referenced should also be information that is readily available to the permitting authority. Rather than attempting to specify those particular documents that may be appropriately cross-referenced, we have decided to adopt language setting forth general principles regarding the cross-referencing of other documents in Part 2 applications. These general principles are included in a new paragraph codified as 40 CFR 63.53(b)(1).

We have concluded that an applicant should be permitted to cross-reference specific information in any prior submission to the permitting authority, so long as the applicant does not presume favorable action on any prior application or request which is still pending. Further, we have concluded that an applicant should be permitted to cross-reference any part of a standard proposed by EPA pursuant to CAA section 112(d) or 112(h) for a category or subcategory which includes sources to which the Part 2 application applies. We also want to assure applicants that they can cross-reference a proposed standard as part of their Part 2 application without necessarily supporting the proposal itself. Thus, an applicant who cross-references a proposed standard is free to argue that another approach (other than the approach proposed by EPA) should be used in making the case-by-case MACT determination.

We received numerous comments in response to our question asking whether the applicant needs to provide ''estimated total uncontrolled and controlled emission rates'' for HAP, and in response to our question asking whether new emission testing should be required if an applicant lacks sufficient information to make meaningful estimates. Many commenters argued that estimated emission rates are not necessary, and that no new emission testing should be required. Commenters also argued that such information can be requested by the permitting authority in those instances where it may be needed.

In evaluating these comments, we have considered whether estimates of controlled and uncontrolled emission rates are consistently needed to process a Part 2 application. In some instances, such emission data may be necessary to identify those emission points which would be subject to control under a proposed MACT standard, but we believe that the provision requiring the applicant to otherwise identify such emission points is sufficient in those instances where this is true. Such emission information may also be necessary in some cases to develop permit terms which apply the general requirements of a particular MACT standard or determination to the particular characteristics of an affected source. However, we believe that it is sufficient to assure that the permitting authority can request that an applicant provide specific emission information it needs for this purpose. We note that if such information is not provided in the Part 2 application, the permitting authority will still be able to obtain it in the context of the permitting process which follows. Based on this analysis, we have decided to delete the provision requiring estimates of total uncontrolled and controlled HAP emission rates in Part 2 applications, and to add a provision requiring the applicant to submit any additional emission data or other information specifically requested by the permitting authority.

Commenters generally argued that the applicant should not be required to submit ''information relevant to establishing the MACT floor.'' We agree with this conclusion. We do not think applicants should be required to submit such information, but we do think they should be free to do so if they wish to propose an alternative to the floor determination set forth in the proposed MACT standard. Accordingly, we have deleted this information as a mandatory requirement, but have retained the provision permitting the applicant to suggest an alternative set of emission limitations or work practice provisions on a discretionary basis.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive 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.

It has been determined that these final amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must approve any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required for the General Provisions amendments because, for sources affected by CAA section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by 40 CFR part 63 will be estimated when standards applicable to such category are promulgated.

Approval of an ICR is not required for the section 112(j) rule amendments, either. The EPA fully expects to promulgate all remaining MACT standards before the Part 2 permit applications are due, thus eliminating the burden associated with preparing the application and developing case-by-case MACT determinations for individual sources.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA has also determined that these amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule amendments on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 1,000 employees; (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory flexibility analysis is not necessary for the General Provisions amendments because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when specific emission standards affecting those sources are developed. ''Small entities'' will be defined in the context of the applicability of those standards.

Similarly, no analysis has been prepared for the amendments to the section 112(j) rule. The rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement, but it does not by itself impose any regulatory requirements or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Although the final amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule amendments on small entities. We do not require the Part 2 permit applications until 60 days after the scheduled MACT standard promulgation date. We fully anticipate that all MACT standards will be promulgated before any Part 2 applications are due, thus eliminating the burden of submitting a Part 2 application.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 aggregate, or by the private sector, of $100 million or more in any 1 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 objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the 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 the 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.

The EPA has determined that these final amendments do 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 1 year. The EPA has determined that this action is not a ''significant'' regulatory action within the meaning of Executive Order 12866, and it does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final rule amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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'' are 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.''

These final amendments do not have federalism implications and 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. Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State and local governments, EPA specifically solicited comment on the rule amendments from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects 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.''

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or 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 in Executive Order 13175. There are currently no tribal governments that have approved title V permit programs to which sources would submit permit applications on May 15, 2002. Accordingly, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 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 reasonable alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final amendments to the General Provisions are not subject to Executive Order 13045 because the provisions provide general technology performance and compliance guidelines for section 112(d) standards, which are not based on health or safety risks. Likewise, the final amendments to the section 112(j) rule are not subject to Executive Order 13045 because they establish the process for developing case-by-case MACT, and thus are based on technology performance and not on safety or health risks.

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

These final amendments are not subject to Executive Order 13211 (66 FR 26355, May 22, 2001), because they are 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 (NTTAA) of 1995, (Pub. L. No. 104–113) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final amendments to the General Provisions do not include any technical standards; they consist primarily of revisions to the generally applicable procedural and administrative requirements that the General Provisions overlay on NESHAP. The final amendments to the section 112(j) rule, which establishes requirements and procedures for owners or operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of section 112(d) standards, clarify and amend current procedural and administrative provisions to establish equivalent emissions limitations by permit. Therefore, section 112(j) is also not a vehicle for the application of voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, 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. Therefore, we will submit a report containing the final amendments 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**. These final amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2), and therefore will be effective May 30, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 8, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.2 is amended by revising the first sentence in the definition of *Malfunction* to read as follows:

§ 63.2 Definitions.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. * * *

* * * * *

■ 3. Section 63.6 is amended by:
■ a. Revising paragraph (e)(1)(i);
■ b. Revising the first sentence in paragraph (e)(3)(i) introductory text;
■ c. Revising paragraph (e)(3)(i)(A);
■ d. Revising paragraph (e)(3)(iv);
■ e. Adding five sentences to the end of paragraph (e)(3)(v);
■ f. Revising paragraph (e)(3)(vi);
■ g. Revising the introductory text to paragraph (e)(3)(vii) and revising paragraph (e)(3)(vii)(B); and
■ h. Revising the last sentence in paragraph (e)(3)(viii).
■ The revisions and addition read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices. The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(3) *Startup, shutdown, and malfunction plan.* (i) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control and monitoring equipment used to comply with the relevant standard. * * *

(A) Ensure that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

* * * * *

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

(v) * * * The Administrator may at any time request in writing that the owner or operator submit a copy of any startup, shutdown, and malfunction plan (or a portion thereof) which is maintained at the affected source or in the possession of the owner or operator. Upon receipt of such a request, the owner or operator must promptly submit a copy of the requested plan (or a portion thereof) to the Administrator. The Administrator must request that the owner or operator submit a particular startup, shutdown, or malfunction plan (or a portion thereof) whenever a member of the public submits a specific and reasonable request to examine or to receive a copy of that plan or portion of a plan. The owner or operator may elect to submit the required copy of any startup, shutdown, and malfunction plan to the Administrator in an electronic format. If the owner or operator claims that any portion of such a startup, shutdown, and malfunction plan is confidential business information entitled to protection from disclosure under section 114(c) of the Act or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection or submitted when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * *

(B) Fails to provide for the operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

* * * * *

(viii) * * * In the event that the owner or operator makes any revision to the startup, shutdown, and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established

under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority.

* * * * *

■ 4. Section 63.9 is amended by revising the first sentence in paragraph (h)(2)(ii) and adding a sentence to the end of paragraph (h)(2)(ii) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(h) * * *

(2) * * *

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). * * * Notifications may be combined as long as the due date requirement for each notification is met.

* * * * *

■ 5. Section 63.10 is amended by revising paragraphs (d)(5)(i) and (ii) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. Such a report shall identify any instance where any action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the affected source's startup, shutdown, and malfunction plan, but the source does not exceed any applicable emission limitation in the relevant emission standard. Such a report shall also include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the relevant emission standard, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph (d)(5)(ii) shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and describing all excess emissions and/or parameter monitoring exceedances which are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph (d)(5)(ii) are specified in § 63.9(i).

* * * * *

■ 6. Section 63.13 is amended by revising the address for EPA Region IV in paragraph (a) to read as follows:

§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) * * *

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee). Director, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104.

* * * * *

Subpart B—[Amended]

■ 7. Section 63.50 is amended by adding paragraph (c) and paragraph (d) to read as follows:

§ 63.50 Applicability.

* * * * *

(c) The procedures in §§ 63.50 through 63.56 apply for each affected source only after the section 112(j) deadline for the source category or subcategory in question has passed, and only until such time as a generally applicable Federal standard governing that source has been promulgated under section 112(d) or 112(h) of the Act. Once a generally applicable Federal standard governing that source has been promulgated, the owner or operator of the affected source and the permitting authority are not required to take any further actions to develop an equivalent

emission limitation under section 112(j) of the Act.

(d) Any final equivalent emission limitation for an affected source which is issued by the permitting authority pursuant to §§ 63.50 through 63.56 prior to promulgation of a generally applicable Federal standard governing that source under section 112(d) or 112(h) of the Act shall be deemed an applicable Federal requirement adopted pursuant to section 112(j) of the Act. Each such equivalent emission limitation shall take effect upon issuance of the permit containing that limitation under section 112(j)(5) of the Act, and shall remain applicable to the source until such time as it may be revised or supplanted pursuant to the procedures established by §§ 63.50 through 63.56. Such a final equivalent emission limitation, and all associated requirements adopted pursuant to § 63.52(f)(2), are directly enforceable under Federal law regardless of whether or not any permit in which they may be contained remains in effect.

■ 8. Section 63.52 is amended by revising paragraphs (e)(1) and (e)(2)(i) through (ii) to read as follows:

§ 63.52 Approval process for new and existing affected sources.

* * * * *

(e) *Permit application review.*

(1) Each owner or operator who is required to submit to the permitting authority a Part 1 MACT application which meets the requirements of § 63.53(a) for one or more sources in a category or subcategory subject to section 112(j) must also submit to the permitting authority a timely Part 2 MACT application for the same sources which meets the requirements of § 63.53(b). Each owner or operator shall submit the Part 2 MACT application for the sources in a particular category or subcategory no later than the applicable date specified in Table 1 to this subpart. The submission date specified in Table 1 to this subpart for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in Table 2 to this subpart. When the owner or operator is required by §§ 63.50 through 63.56 to submit an application meeting the requirements of § 63.53(a) by a date which is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by Table 1 to this subpart, the owner or operator shall submit a Part 2 MACT application meeting the requirements of § 63.53(b) within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) Notwithstanding paragraph (e)(1) of this section, the owner or operator may request either an applicability determination or an equivalency determination by the permitting authority as provided in paragraphs (e)(2)(i) and (ii) of this section.

(i) Each owner or operator who submitted a request for an applicability determination pursuant to paragraph (d)(1) of this section on or before May 15, 2002, which remains pending before the permitting authority on May 30, 2003, and who still wishes to obtain such a determination, must resubmit that request by July 29, 2003, or by the date which is 60 days after the Administrator publishes in the **Federal Register** a proposed standard under section 112(d) or 112(h) of the Act for the category or subcategory in question, whichever is later. Each request for an applicability determination which is resubmitted under this paragraph (e)(2)(i) must be supplemented to discuss the relation between the source(s) in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The permitting authority must take action upon each properly resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request. If the applicability determination is positive, the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b) by the date specified for the category or subcategory in question in Table 1 to this subpart. If the applicability determination is negative, then no further action by the owner or operator is necessary.

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator who has submitted an application meeting the requirements of § 63.53(a) may request a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in Table 1 to this subpart. Any owner or operator who previously submitted such a request under a prior version of this paragraph (e)(2)(ii) need not resubmit the request. Each request for an equivalency determination under this paragraph (e)(2)(ii), regardless of when it was submitted, will be construed in the alternative as a complete application for an equivalent emission limitation under section 112(j). The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the permitting authority must make a new MACT determination and adopt a title V permit incorporating an appropriate equivalent emission limitation under section 112(j). Such a determination constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

* * * * *

■ 9. Section 63.53 is amended by:
■ a. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2) and (3);
■ b. Adding a new paragraph (b)(1); and
■ c. Revising newly designated paragraph (b)(2).
■ The addition and revision read as follows:

§ 63.53 Application content for case-by-case MACT determinations.

* * * * *

(b) * * *

(1) In compiling a Part 2 MACT application, the owner or operator may cross-reference specific information in any prior submission by the owner or operator to the permitting authority, but in cross-referencing such information the owner or operator may not presume favorable action on any prior application or request which is still pending. In compiling a Part 2 MACT application, the owner or operator may also cross-reference any part of a standard proposed by the Administrator pursuant to section 112(d) or 112(h) of the Act for any category or subcategory which includes sources to which the Part 2 application applies.

(2) The Part 2 application for a MACT determination must contain the information in paragraphs (b)(2)(i) through (b)(2)(v) of this section.

(i) For a new affected source, the anticipated date of startup of operation.

(ii) Each emission point or group of emission points at the affected source which is part of a category or subcategory for which a Part 2 MACT application is required, and each of the hazardous air pollutants emitted at those emission points. When the Administrator has proposed a standard pursuant to section 112(d) or 112(h) of the Act for a category or subcategory, such information may be limited to those emission points and hazardous air pollutants which would be subject to control under the proposed standard.

(iii) Any existing Federal, State, or local limitations or requirements governing emissions of hazardous air pollutants from those emission points which are part of a category or subcategory for which a Part 2 application is required.

(iv) For each identified emission point or group of affected emission points, an identification of control technology in place.

(v) Any additional emission data or other information specifically requested by the permitting authority.

* * * * *

■ 10. Subpart B is amended by adding Tables 1 and 2 to the end of the subpart to read as follows:

Tables to Subpart B of Part 63

TABLE 1 TO SUBPART B OF PART 63.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
10/30/03	Combustion Turbines.
	Lime Manufacturing.
	Site Remediation.
	Iron and Steel Foundries.
	Taconite Iron Ore Processing.
	Miscellaneous Organic Chemical Manufacturing (MON).[1]
	Organic Liquids Distribution.
	Primary Magnesium Refining.
	Metal Can (Surface Coating).
	Plastic Parts and Products (Surface Coating).
	Chlorine Production.
	Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes).[2]
4/28/04	Industrial Boilers, Institutional/Commercial Boilers and Process Heaters.[3]
	Plywood and Composite Wood Products.
	Reciprocating Internal Combustion Engines.[4]
	Auto and Light-Duty Truck (Surface Coating).
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters.[5]
	Hydrochloric Acid Production.[6]

[1] Covers 23 source categories, see Table 2 to this subpart.

[2] Two source categories.

[3] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.

[4] Includes engines greater than 500 brake horsepower.

[5] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.

[6] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2 TO SUBPART B OF PART 63.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives.
Alkyd Resins Production.
Maleic Anhydride Copolymers Production.
Polyester Resins Production.
Polymerized Vinylidene Chloride Production.
Polymethyl Methacrylate Resins Production.
Polyvinyl Acetate Emulsions Production.
Polyvinyl Alcohol Production.
Polyvinyl Butyral Production.
Ammonium Sulfate Production-Caprolactam By-Product Plants.
Quaternary Ammonium Compounds Production.
Benzyltrimethylammonium Chloride Production.
Carbonyl Sulfide Production.
Chelating Agents Production.
Chlorinated Paraffins Production.
Ethylidene Norbornene Production.
Explosives Production.
Hydrazine Production.
OBPA/1,3-Diisocyanate Production.
Photographic Chemicals Production.
Phthalate Plasticizers Production.
Rubber Chemicals Manufacturing.
Symmetrical Tetrachloropyridine Production.

[FR Doc. 03–13178 Filed 5–29–03; 8:45 am]

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Federal Register

Friday,
May 30, 2003

Part III

Environmental Protection Agency

40 CFR Part 63

List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[A–99–03, OAR–2003–0028; FRL–7504–9]

RIN: 2060–AI72

List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act (CAA) by removing the compound methyl ethyl ketone (MEK) (2-Butanone) (CAS No. 78–93–3). This action is being taken in response to a petition submitted by the Ketones Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of MEK producers and consumers to delete MEK from the HAP list. Petitions to remove a substance from the HAP list are permitted under section 112(b)(3) of the CAA.

The proposed rule is based on EPA's evaluation of the available information concerning the potential hazards and projected exposures to MEK. We have made an initial determination that there are adequate data on the health and environmental effects of MEK to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the compound may not reasonably be anticipated to cause adverse human health or environmental effects. This action includes a detailed rationale for delisting MEK, and we request comment on the proposal.

DATES: *Comments.* Written comments on the proposed rule must be received by August 28, 2003.

Public Hearing. A public hearing regarding the proposed rule will be held if requests to speak are received by the EPA on or before July 29, 2003. If requested, a public hearing will be held approximately 90 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. Electronic comments may be submitted on-line at *http://www.epa.gov/edocket/.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier (*e.g.*, FedEx, Airborne, and UPS) should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number A–98–44, Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is requested by July 29, 2003, the public hearing will be held in our EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2962. Persons interested in attending the public hearing should also contact Ms. Rimer to verify the time, date and location of the hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2962, electronic mail address *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially affected by this action are those industrial facilities that manufacture or use MEK. This action proposes to amend the list of HAP contained in section 112(b)(1) of the CAA by removing the compound MEK. The decision to grant the petition and issue a proposed rule to delist MEK removes MEK from regulatory consideration under section 112(d) of the CAA.

Docket. The EPA has established an official public docket for this action under Docket ID No. A–99–03, and Electronic Docket No. OAR–2003–0028. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The 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 Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. 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 of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (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. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

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.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The 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.

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 key in Docket ID No. A–99–03, or Electronic Docket Id. No. OAR–2003–0028. 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.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. A–99–03, or Electronic Docket ID. No. OAR–2003–0028. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA West, (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0028.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2003–0028. Such deliveries are only accepted during the Docket Center's normal hours of operation.

By Facsimile. Fax your comments to: (202) 566–1741, Docket ID No. OAR–2003–0028.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Kelly Rimer, c/o Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2003–0028. 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. This preamble is organized as follows:

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  I. National Technology Transfer and Advancement Act

I. Background

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) includes a list of 188 specific chemical compounds and classes of compounds that Congress identified as HAP. The EPA must evaluate the emissions of substances on the HAP list to identify source categories for which the Agency must establish emission standards under section 112(d). We are required to periodically review the list of HAP and, where appropriate, revise this list by rule. In addition, under section 112(b)(3), any person may petition us to modify the list by adding or deleting one or more substances. A petitioner seeking to delete a substance must demonstrate that there are adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or the environment. A petitioner must provide a detailed evaluation of the available data concerning the substance's potential adverse health and environmental effects and estimate the potential exposures through inhalation or other routes resulting from emissions of the substance.

On November 27, 1996, the American Chemistry Council's Ketones Panel

submitted a petition to delete MEK (CAS No. 78–93–3) from the HAP list in section 112(b)(1), 42 U.S.C., 7412(b)(1). Following the receipt of the petition, we conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all available health and environmental effects data. A petition must also provide comprehensive emissions data, including peak and annual average emissions for each source or for a representative selection of sources, and must estimate the resulting exposures of people living in the vicinity of the sources. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. We determined the petition to delete MEK to be complete and published a notice of its receipt in the **Federal Register** on June 23, 1999, at 64 FR 33453 and requested information to assist us in technically reviewing the petition in addition to other comments.

We received 10 submissions in response to our request for comment and information which would aid our technical review of the petition. We responded to substantive comments in our technical review of the petition.

II. Criteria for Delisting

Section 112(b)(2) of the CAA requires us to make periodic revisions to the initial list of HAP set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise * * *.

Section 112(b)(3) establishes general requirements for petitioning the Agency to modify the HAP list by adding or deleting a substance. Although the Administrator may add or delete a substance on his or her own initiative, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in section 112(b)(3)(B) and (C).

The Administrator must either grant or deny a petition to delist a HAP within 18 months of receipt of a complete petition. If the Administrator decides to deny a petition, the Agency publishes a written explanation of the basis for denial in the **Federal Register**. A decision to deny a petition is final Agency action subject to review. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. The proposed rule is open to public comment and public hearing, and all additional substantive information received is considered prior to the issuance of a final rule.

To delete a substance from the HAP list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation of deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

If the Administrator decides to grant a petition, the Agency publishes a written explanation on the Administrator's decision, along with a proposed rule to add or delete the substance. The proposed rule is open to public comment and public hearing. We evaluate all substantive information received during public comment prior to taking any final action related to a proposed rule.

We do not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms ''adequate'' and ''reasonably'' indicate that the Agency must weigh the potential uncertainties and likely significance. Impact of the uncertainties concerning the risks of adverse health or environmental effects may be mitigated if we can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, impacts of uncertainties due to the magnitude of projected exposures may be mitigated if we can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to demonstrate that the available data support an affirmative determination that emissions of a substance may not be reasonably anticipated to result in adverse effects on human health or the environment (that is, EPA will not remove a substance from the list of HAP based merely on the inability to conclude that emissions of the substance will cause adverse effects on human health or the environment). As a part of the requisite demonstration, a petitioner must resolve any critical uncertainties associated with missing information. We will not grant a petition to delete a substance if there are major uncertainties that need to be addressed before we would have sufficient information to make the requisite determination.

III. Summary of the Petition

A. Background

The petition to delist MEK is presented in the form of a risk assessment that considers multiple routes of exposure and evaluates the likelihood and severity of adverse effects to human health and the environment arising from exposures to ambient levels of MEK. The petition presents a characterization of the sources and releases of MEK, estimates exposures, identifies the potential hazard and the dose-response relationship of MEK, and characterizes the risk from a reasonable worst-case lifetime exposure to MEK, and to worst-case short-term (24 hour) exposure to MEK. This section of today's proposed action presents an overview of the petition to delist MEK, and the petitioner's conclusions based on that information. Please consult the docket for more detail about the petition or EPA's evaluation of the petition.

The petition to delist MEK presents background information on MEK, including chemical and physical properties data and production and use data. The petitioner used the 1994 Toxic Release Inventory (TRI) as the basis of an emissions inventory intended to quantify annual emissions of MEK, to identify and locate emissions sources, and to acquire some facility-specific emissions information. The 1994 TRI shows that there are over 2,000 sources with reported emissions of MEK. The petition states that over 85 percent of these facilities (approximately 1,700) emit 25 tons per year (tpy) or less. The petition also states that approximately 800 facilities emit between 10 and 200 tpy, and 27 facilities emit 200 tpy or more. In addition to using the 1994 TRI, the petitioner queried a subset of individual sources to obtain site-specific source, release, and facility information for the purpose of conducting more detailed risk assessments.

B. Exposure Assessment

The petition's emissions inventory provides the basis for a tiered air dispersion modeling analysis as described in ''Tiered Modeling Approach for Assessing Risk due to Sources of Hazardous Air Pollutants'' (EPA–450/4–92–001). That tiered analysis applies successive refinements in model selection and input data to derive conservative estimates of the maximum annual average ambient concentration of MEK. ''Conservative'' refers to the selection of models and modeling parameters that are more likely to overestimate, rather than underestimate, the ambient concentrations of a given pollutant when data are limited.

Tier 1 air dispersion modeling requires limited source information and provides the most conservative estimate of maximum concentrations of the tiers. Tier 2 modeling requires additional source information and a simple air dispersion model and results in air concentrations that are more realistic than tier 1 estimates, but which are still considered to be conservative. In the assessment, the petition used EPA's SCREEN3 model for tier 2 analyses. Tier 3 requires extensive data from a source and recommends using EPA's most advanced dispersion modeling techniques to provide even more realistic, though generally still conservative, estimates of maximum concentrations. In the assessment, the petitioner used EPA's Industrial Source Complex Short Term 3 (ISCST3) model for the tier 3 analysis. Because each successive tier provides a less conservative and more realistic estimate of the ambient MEK concentration, the petitioner performed tier 3 modeling only where the tier 2 modeling predicted maximum annual average ambient concentrations of MEK above a designated threshold. Using this approach, the petitioner developed a reasonable worst-case exposure scenario by estimating the maximum annual average ambient concentration expected to result from emissions of MEK from a single facility. The petition also accounts for emissions of MEK from several sources located within close proximity to each other (often called a cluster of sources). The petition does this in order to assess the potential impact to a person who may live close to a cluster of MEK-emitting facilities.

The petition reasoned that the majority of risk would come from facilities that emit large amounts of MEK. The petitioner identified facilities which emitted 200 tpy or more of MEK as large. The petitioner contacted each of the 27 large facilities to gather data with which to model maximum, off-site ambient concentrations of MEK. That analysis also used information from title V permits. The petitioner was able to obtain the necessary modeling information for 21 of the 27 facilities, including the six highest emitters of MEK, and 13 of the top 15 emitters. The analysis for these facilities applied tier 2 and tier 3 modeling techniques. The maximum annual average concentration estimated from the largest MEK emission source using the tier 3 model was approximately 1.2 milligrams per cubic meter (mg/m^3). However, that concentration was located at the entrance to an adjacent industrial facility where there were no environmental or human receptors. The MEK emissions from the other sources modeled in the tiered approach were all less than 0.9 mg/m^3. For the seven facilities with the highest predicted fence line concentrations, the maximum annual average ambient levels of MEK decreased to below 0.5 mg/m^3 within 175 meters from the fence line.

In addition to modeling sources emitting 200 tpy or more, the petition also includes an analysis of sources emitting lesser amounts. The petitioner used a tier 2 analysis to model those MEK sources (approximately 800 in all) which, based on the inventory, emitted more than 10 tpy but less than the 200 tpy. The petitioner divided these emission sources into source categories based on their two digit Standard Industrial Classification (SIC) codes. For each SIC, the petitioner modeled a ''worst case'' prototype plant using conservative site configurations (*e.g.*, distance to fence lines), the highest reported emissions rate for the individual category, and worst-case dispersion meteorology. The maximum predicted annual average ambient concentration of MEK from the sources emitting less than 200 tpy of MEK was approximately 0.7 mg/m^3. The remaining MEK emission sources included under this approach were determined to have maximum annual average ambient concentrations less than 0.6 mg/m^3.

The petition includes estimates of 24-hour average concentrations in addition to estimates of annual average concentrations. The highest 24-hour average concentration as predicted by tier 3 modeling was 12.8 mg/m^3. That concentration was at the same location where the highest annual concentration was predicted to occur. The petition states that there are no people or environmental receptors at that location. The petition states further that all other modeled 24-hour concentrations are below 10 mg/m^3 and concludes that people would not be exposed to 24-hour concentrations greater than this value.

To address the potential impact of MEK sources that are located within close proximity to each other, the petitioner identified, from the 1994 TRI, every facility in the United States with MEK emissions greater than 10 tpy. The petitioner used postal ZIP codes to determine areas in which emission sources were situated near one another. Using this approach, the petition analyzed 91 facilities. Of these facilities, only three ZIP codes contained groups of facilities that collectively emitted more than 200 tpy. The petitioner used results from the previous tiered analysis to evaluate the potential for these facilities to have significant overlapping impacts. Based on the analysis, the petition concluded that the combined impacts from multiple MEK emission sources situated close to one another will not result in maximum annual average ambient MEK concentrations greater than 1 mg/m^3, or in 24-hour concentrations greater than 10 mg/m^3. In most cases, the concentrations will be well below these values.

The petitioner reviewed available ambient air monitoring studies to determine the potential contribution of ambient background MEK to the maximum annual average and 24-hour average MEK concentrations. Here, background refers to air concentrations of MEK from sources not modeled in the analysis (*e.g.*, mobile). The review showed that MEK has been monitored in both urban and rural locations. The highest reported MEK concentrations occurred in the Houston ship channel where the yearly averages from 1987–1995 for seven sites ranged from approximately 0.0009 to 0.0018 mg/m^3. The maximum 24-hour average concentration also occurred in the Houston ship channel over the same time period where the highest reported average was 0.09 mg/m^3. Based on this review, the petitioner concluded that background MEK is not a significant contributor to the maximum annual average, or maximum 24-hour average concentration of MEK.

The petitioner reviewed MEK's fate in the environment to determine the most probable routes of human exposures to ambient MEK. The petitioner used physical chemical data taken from the literature and a number of EPA databases to conclude that MEK does not persist or bioaccumulate in the environment. The petition also states that due to its high vapor pressure, MEK discharged onto a terrestrial environment is expected to rapidly volatilize to air. Volatilization from

water is also reported to occur at a significant rate, and the petition reports MEK to be readily biodegradable in both aerobic and anaerobic environments. The petitioner concluded that MEK is not anticipated to pose an exposure problem in drinking water, and that inhalation is the primary route of exposure for humans living in the vicinity of MEK emission sources.

The petition states that while in the air, MEK decomposes to carbon dioxide, carbon monoxide, and water through various reactions. One of the intermediaries is a probable carcinogen: acetaldehyde. The petitioner maintained that acetaldehyde formed during MEK's transformation disappeared approximately 70 times faster than it was created. Therefore, the petitioner concluded, the rapid dispersion of MEK, coupled with its half-life of about 9 days and the comparatively short half-life of acetaldehyde (about 14 hours), resulted in low ambient levels of MEK-produced acetaldehyde. The petition states that the resulting concentration levels cannot be reasonably anticipated to cause adverse human health effects.

C. Human Health Effects Assessment

The petition presents toxicological data, which are used for hazard identification and to determine dose-response relationships, citing the EPA's Integrated Risk Information System (IRIS). These data are also supplemented by an extensive review of the literature that includes articles published after the most recent review of the IRIS database for MEK which occurred in 1992.

The petition concludes that MEK's acute and chronic toxicity are low, and that it demonstrates little or no subchronic toxicity. The petition also reports that MEK has been shown to be without genotoxic activity, but it has not been specifically tested for carcinogenicity. However, the petition states that data on MEK's structure, metabolism, subchronic health effects, and genotoxic effects indicate that it is not likely to have carcinogenic properties.

The petition states that MEK by itself has little potential to produce damage to the nervous system. The petition discusses MEK's ability to potentiate the neurotoxic effects of other chemicals when both are present at relatively high concentrations and concluded that MEK does not pose a neurotoxic hazard to humans under ambient exposure scenarios. The petition also states that MEK has not been shown to produce birth defects (*i.e.,* teratogenicity) and does not produce reproductive effects in subchronic inhalation studies.

The petition takes the position that MEK's developmental toxicity is low, and that developmental toxicity is the basis for the 1992 EPA IRIS Reference Concentration (RfC) for MEK of 1.0 mg/m^3. The RfC is a peer-reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a life time (*i.e.,* 70 years).

The petition provides a review of EPA's derivation of the IRIS RfC for MEK. Based on this review and the application of EPA guidelines that were published after the 1992 update of the MEK RfC, the petitioner proposed a revised criterion for human health effects. The petitioner's proposed revision suggests an increase in the RfC from 1 mg/m^3 to 3.3 mg/m^3. (The details of the petitioner's reassessment are contained in the docket.)

For short-term exposure, the petition adjusts the revised RfC by eliminating the uncertainty factor of 10 that is used for extrapolating from subchronic to chronic exposure. The resulting short-term human health criterion submitted in the petition is 33 mg/m^3.

D. Risk Characterization and Conclusions Regarding Risks to Human Health

The petitioner characterized human health risks from exposure to the predicted ambient MEK concentration levels by comparing the maximum estimated annual average concentration to their proposed revised RfC of 3.3 mg/m^3. Based on the conservatism built into the model estimates, the petitioner concluded that actual maximum annual average ambient concentrations of MEK are unlikely to exceed 1 mg/m^3 for the highest emitting source and will be significantly less than 1 mg/m^3 for all other sources. The petitioner concluded that the available evidence demonstrates that actual exposures are not likely to approach the 1992 IRIS RfC of 1 mg/m^3 and will not exceed the petitioner's revised health criterion of 3.3 mg/m^3. The petition characterized human health risks from 24-hour exposures by comparing the estimated 24-hour concentrations, 10 mg/m^3 with a human health benchmark of 33 mg/m^3, and determined that these short-term concentrations will not approach their criterion of 33 mg/m^3. Therefore, the petitioner concluded that adverse human health effects arising from ambient exposures to MEK emissions cannot be reasonably anticipated to occur.

E. Ecological Assessment and Conclusions

The petition presents ecological toxicity data for environmental effects as the basis for its assessment of the potential ecological risks from the release of MEK to the environment. The petition uses data from several EPA databases and from the general literature. The petition includes no data on the potential for ecological effects to occur due to its presence in media other than water. The petitioner concluded that the available data indicate that MEK has low acute toxicity for aquatic organisms. Although there are no data on chronic aquatic toxicity, the petitioner stated that MEK is not expected to be chronically toxic to aquatic organisms because of its limited persistence in aqueous habitats, which results from its rapid volatilization and biodegradation. The petition compares predicted maximum ambient annual average concentrations to the identified ecotoxicity endpoints. Based on that comparison and information on MEK's environmental behavior, the petitioner concluded that MEK cannot reasonably be anticipated to cause significant and widespread adverse environmental effects.

IV. EPA Analysis of the Petition

The following section presents EPA's evaluation and analysis of the petition to delist MEK. The technical review was conducted by EPA's Office of Air and Radiation, with assistance from EPA's Office of Research and Development. The supporting review materials are contained in the docket.

A. Exposure Assessment

Methyl Ethyl Ketone is a clear, colorless, stable, low-boiling point (79.6 °C), highly volatile (vapor pressure 90.6 torr at 25 °C), highly flammable (flash point 1 °C, auto ignition temperature 515 °C) liquid. It is very soluble in water (240 grams per liter at 20 °C), miscible with organic solvents and forms azetropes with water and many organic liquids. Methyl ethyl ketone has exceptionally high solvent powers for many natural and synthetic resins. It is used as a solvent in the surface coatings industry, specifically in vinyl lacquers, nitrocellulose lacquers, and acrylics, and is used as a chemical intermediate. Methyl ethyl ketone is also used in other industries for producing adhesives, magnetic tapes, printing inks, degreasing and cleaning fluids, as a dewaxing agent for lubricating oils, as an intermediate in the production of antioxidants, perfumes, and as a catalyst. Methyl ethyl ketone also occurs

naturally. It is emitted from various evergreen trees and has been identified as a natural component of several foods.

We concur with the petition that inhalation is the principal route of non-occupational exposures to MEK emissions. The absorption of MEK through the skin at the estimated ambient levels is likely to be insignificant compared to inhalation. In addition, its relatively rapid volatilization and rapid biodegradation in water indicates that humans are unlikely to be exposed to significant amounts of MEK in drinking water.

To determine the adequacy of the petition's exposure assessment, we first evaluated the emissions inventory and the petition's source characterization. We then evaluated the dispersion modeling in terms of the methods and application of the models.

To evaluate the emissions inventory, we compared the petition's list of MEK emission sources to EPA's 1996 National Toxics Inventory (NTI). We determined that the petition correctly identified the largest sources of MEK emissions, and that the quantity of emissions for each identified source was comparable to the NTI. There was an overall lack of agreement, however, between the total count of MEK emission sources listed in the NTI and in the petition's inventory. We determined that this resulted from a general weakness in the ability of the petitioner's approach to identify facilities emitting less than 25 tpy of MEK. However, after reviewing both the inventory and the petitioner's tiered modeling approach, we determined that these discrepancies are not material to the subsequent exposure analysis, and agreed that we would consider the characterization of the maximum concentrations from the medium and large sources to account for the reasonable worst-case exposure scenario. Therefore, we have concluded that the petitioner's emissions inventory provides an adequate basis for the dispersion modeling and exposure assessment presented in the petition.

To evaluate the petition's characterization of sources (*e.g.,* stack heights, plume rise, distance to the nearest fence line and meteorology), we considered the petitioner's use of the TRI database and acquired a subset of the parameters the petitioner used in the more site-specific (tier 3) assessments. We determined that the petitioner appropriately used TRI as a basis for characterizing sources. We examined the source parameters the petitioner used in the tier 3 analyses and determined, based on our engineering knowledge of the types of sources included in the analyses, that the parameters are reasonable.

Our evaluation of the petition's dispersion modeling approach initially focused on the petitioner's use of the EPA models in the tiered analyses. We evaluated the petition's modeling approach for both annual average concentrations and for 24-hour concentrations. Our evaluation verified that the petitioner applied appropriate EPA guidelines in the modeling effort, and that the data inputs used in the models are appropriately conservative.

We first evaluated the petition's modeling of long-term averages. To develop a more detailed evaluation of the petition's dispersion analyses, we acquired from the petitioner electronic copies of the raw data inputs and the model runs for seven of the largest emissions sources. This represents a subset of the sources which emit over 200 tpy. The EPA selected these sources for scrutiny from the tier 3 analysis set which the petitioner modeled using EPA's ISCST3 model. Based on a detailed review of the data inputs and the ISCST3 model runs, we confirmed that a conservative estimate (*i.e.,* more likely to be over predicted than under predicted) of the highest maximum annual average concentration of MEK for all the facilities modeled is approximately 1.2 mg/m^3. We agree with the petitioner's assertion that this concentration occurred at the entrance to an industrial facility adjacent to a relatively large MEK emission source in an industrial park. The maximum annual average concentration for the remaining emissions sources were all less than 0.9 mg/m^3.

We confirmed that for this subset of emission sources, the maximum predicted annual concentration of MEK declined below 0.5 mg/m^3 within 175 meters of the facility fence lines. Therefore, we concur with the petitioner that the predicted concentrations decline rapidly as the distance from the emission source increases. That is, within the relatively short distance of 175 meters, the maximum annual concentrations of MEK are likely to be at least a factor of two lower than the maximum predicted ISCST3 values for all sources in this subset.

We evaluated the petitioner's modeling analyses for sources emitting less than 200 tpy of MEK. The petitioner used a tier 2 analysis to predict maximum annual average concentrations for a series of worst-case emission scenarios for this subset of sources. After a detailed evaluation of the model parameters and input data, we determined that the petitioner's analyses of these emission sources also followed the appropriate EPA dispersion model guidelines.

Based on our review, we have concluded that the predicted maximum annual average concentration for those sources emitting less than 200 tpy of MEK is less than 0.7 mg/m^3. These predicted concentration levels are conservative estimates which are also expected to decline rapidly as distance from the facility increases.

During the review, we questioned the petitioner's designation of ''large emission sources'' as those sources emitting more than 200 tpy of MEK. We requested that they conduct a more detailed analysis on sources emitting less than 200 tpy. We suggested that the petitioner use a minimum emission rate that could theoretically result in an exceedance of the petition's own specified health criterion of 3.3 mg/m^3. The petitioner would then assess the impact of this new ''threshold of significance'' on the number and identity of sources in the ''large emission sources'' category and, if appropriate, reassess the impacts of this change on concentrations of ambient MEK.

To accomplish this, the petitioner used very conservative assumptions of stack height, plume rise, meteorology, and distance to fence line to define a worst-case facility. Using this worst-case emission scenario coupled with EPA's SCREEN3 model, the petitioner demonstrated that sources emitting less than 90 tpy could not reasonably be expected to exceed the petition's proposed criterion of 3.3 mg/m^3. The petitioner then updated the emissions inventory using the 1996 TRI to identify those sources emitting between 90 and 200 tpy of MEK.

The petitioner then revised the ''threshold of significance'' to reflect the use of the 1992 IRIS RfC of 1 mg/m^3 as a decision criterion. To derive the new threshold, the petitioner decreased some of the conservatism in the tier 1 parameters and remodeled a new worst-case scenario. The petitioner determined that with this new set of assumptions, emissions greater than 145 tpy would be necessary to exceed a 1 mg/m^3 criterion. However, rather than restrict the new analysis to only those sources emitting between 145 and 200 tpy, the petitioner chose to evaluate the larger range of emission sources. Consequently, the revised dispersion modeling analysis focused on those sources emitting between 90 and 200 tpy of MEK. The petitioner submitted that analysis to EPA as an addendum to the original petition.

The petitioner's approach in the revised modeling analysis was to limit

the potential for the model to overestimate exposure (compared to the original modeling approach), while maintaining adequate levels of conservatism in the final estimate. To accomplish that, the petitioner quantified the degree of overestimation in the previous modeling approaches due to conservative source-receptor configurations and adjusted to current model accordingly. That adjustment removed one level of conservatism from the estimates and provided a more realistic, but still conservative, estimate of the maximum annual average concentrations. The adjustment was applied to each of the emission sources in the previous analysis for those sources emitting from 90 to 200 tpy.

Based on this approach, the petitioner estimated that the maximum annual average concentration for the 18 facilities identified which emitted between 90 and 200 tpy of MEK would be less than 0.96 mg/m^3. This value occurred at only one emission source; the remaining 17 facilities in the 90 to 200 tpy range were all less than 0.75 mg/m^3.

We conducted a detailed review of the revised analytical approach and determined that it was acceptable. To quantify the conservatism of the adjusted model outputs, we recommended a site-specific analysis using an ISCST3 model (*i.e.,* tier 3) of the source with the highest estimated MEK concentration (*i.e.,* 0.96 mg/m^3) after the adjustment. The tier 3 analysis predicted a maximum annual average concentration of 0.17 mg/m^3 of MEK from that facility. The tier 3 estimate was then compared to the adjusted emissions estimates to determine the extent of the conservatism remaining in the adjusted estimates. That comparison indicated that the petitioner's adjusted approach overestimated maximum annual average concentration for the source by approximately a factor of six.

The petitioner provided the tier 3 analysis and the supporting data for our evaluation. After reviewing the model run and the supporting documentation in detail, we concluded that the petitioner's approach applies appropriate EPA guidelines and adequately characterizes maximum MEK concentrations from industrial sources. Therefore, based on that information, we have concluded that the maximum annual average MEK concentration from facilities emitting between 90 and 200 tpy of MEK may not reasonably be anticipated to exceed 0.96 mg/m^3, and we expect it to be much less in most cases.

We used the petition's information on the identity and location of MEK facilities to assess the impacts of sources located in close proximity to one another. Using a tier 2 analysis, we independently modeled the emissions from nine sources located relatively close to one another in two adjacent postal ZIP codes. Our analysis confirmed that MEK disperses rapidly as the distance from the emission source increases, and that at the point of maximum impact, the maximum annual average MEK concentration from multiple sources located close to each other may not reasonably be anticipated to exceed 1 mg/m^3; in fact, we expect it to be much less than 1 mg/m^3.

To evaluate the potential contribution of the ambient background MEK to the maximum annual concentration of MEK, we reviewed the literature and various databases, including our Aerometric Information Retrieval System (AIRS) monitoring database and the California Air Toxics database. The available data show MEK measurements ranging from nondetectable to a high of 0.002 mg/m^3 reported in AIRS. That value occurred in the Houston ship channel and represents mean concentrations, averaged over 1 year, from seven sites for the years 1987–1995. In addition, the 2001 AIRS entries show similar maxima (*e.g.,* AIRS shows averages 0f 0.002 mg/m^3 from sites in Providence, Rhode Island). Based on that review, we have concluded that background concentrations are not likely to have a significant influence on maximum annual exposures to MEK.

Given that the petitioner used the same modeling approach to predict 24-hour concentrations as was used to predict annual average concentrations, we accept the conclusion that the maximum 24-hour average concentration expected would be less than 10 mg/m^3. However, we also wanted to evaluate predicted concentrations which may occur over a 1-hour time period. Using air dispersion modeling principles described in EPA's SCREEN3 User's Manual and the estimated annual average and 24-hour average concentrations presented in the petition, we estimated the maximum 1-hour concentration. The predicted annual average concentration is approximately 1 mg/m^3 and the 24-hour average is about 10 mg/m^3. To estimate the 1-hour maximum, we multiply the 24-hour average by 2.5. This results in a 1-hour maximum of approximately 25 mg/m^3.

In terms of ambient air monitoring data, the 2001 AIRS shows that the highest 24-hour concentration is 0.03 mg/m^3, and the highest 3-hour concentration is 0.06 mg/m^3. Both of these concentrations were monitored in Rhode Island at the same location as the highest annual average concentrations for the year 2001. As with the annual average monitoring data, these short-term values are sufficiently low so as not to contribute significantly to short-term maximum concentrations.

To summarize, the petitioner developed a tiered modeling analysis of MEK emissions using EPA's tiered approach to regulatory models. We determined that the petitioner performed all analyses following EPA modeling guidelines, and that the results provide conservative estimates of ambient levels of MEK from the inventoried sources. The modeling study demonstrated that, with the exception of the one location (at the entrance to a facility in an industrial park), estimated maximum annual average concentrations of MEK were less than 1 mg/m^3 for all facilities modeled, and well below 1 mg/m^3 for most of the facilities modeled. For 24-hour and 1-hour averages, we expect the concentrations would not exceed 10 and 25 mg/m^3, respectively. Also, based on the location of the maximum annual and 24-hour off-site concentration predicted at the highest emitting facility, EPA has concluded that no individual could be reasonably anticipated to experience chronic or 24-hour exposures at the level of the predicted maximum ambient concentrations. Therefore, given the conservatism built into the models and petitioner's modeling assumptions, EPA has concluded that we may not reasonably anticipate maximum annual exposures to MEK to exceed 1 mg/m^3. In addition, based on the evaluation of multiple sources located relatively close together, we may not reasonably anticipate that the collective emissions of MEK will result in a maximum annual average off-site concentration of MEK greater than 1 mg/m^3, or a 24-hour average greater than 10 mg/m^3. We, by extrapolation, have concluded that 1-hour concentrations from multiple sources would not exceed 25 mg/m^3. Finally, the petitioner's use of air concentrations for each emission source to characterize the exposed population is an acceptable, conservative approach to exposure modeling. That is, an exposure assessment that would estimate exposures for actual people living near these emission sources would likely result in maximum individual exposures from ambient air that are lower than the estimates presented in the petition. Given the likely proximity of inhabitable areas and the variability of human activity patterns, it is our expectation that actual

maximum individual exposures would be up to a factor of ten less than the maximum exposures presented in the petition. Therefore, in light of our review of the petitioner's exposure analysis, we have concluded that exposures to annual average ambient concentrations of MEK may not reasonably be anticipated to exceed 1 mg/m^3, and that the maximum 24-hour exposures may not reasonably be anticipated to exceed 10 mg/m^3. Also, based on our own analysis, we have concluded that maximum 1-hour exposures may not reasonably be anticipated to exceed 25 mg/m^3.

B. Human Health Effects Assessment

We determined that the petition uses the same toxicological database as the 1992 IRIS assessment of MEK to characterize human health effects and to identify an appropriate human health criterion for the risk characterization for chronic effects. The IRIS is the Agency's official repository of consensus human health risk information. It was created and is maintained by the Agency to provide assistance to Agency decision makers on the potential adverse human health effects of particular substances. In addition, we evaluated recent studies reported in the published literature.

Methyl ethyl ketone is classified in the IRIS (1992) as a Group D compound. A Group D compound is one that is not classifiable as to human carcinogenicity. This classification is based on the absence of human carcinogenicity data and inadequate animal data. There are no animal cancer bioassays of MEK by either the oral or inhalation route. There are structural data on MEK. One study concludes that MEK is unlikely to be carcinogenic based on the lack of any structural features or alerts indicative of carcinogenic potential as a result of mechanism-based structure-activity relationship (SAR) analysis (Woo *et al.,* 2002). Further, Woo has given MEK a low concern rating (unlikely to be of cancer concern) based on comparison to acetone for which there is no evidence of carcinogenicity, and the fact that there is no evidence that unsubstituted mono-ketones have been associated with carcinogenicity/genotoxicity. There is also no reason to anticipate any electrophillic reactivity for unsubstituted mono-ketones mentioned above (*i.e.,* no structural alerts).

Cancer data on humans from which to draw conclusions about potential carcinogenic risks to the human population are weak and limited. None of the occupational epidemiology studies we examined (four studies of three different worker cohorts were available) provided clear evidence of increased cancer risk from occupational exposure to MEK. These data do provide some suggestion of evidence of an increased risk between multiple solvent exposures which included MEK and some cancers including bone and prostate cancer. (Alderson and Rattan, 1980; Wen *et al.,* 1985; Spirtas *et al.,* 1991; Blair *et al.* 1998.)

One study that has received some attention is a 1987 study investigating potential carcinogenic effects in the children of males occupationally exposed to MEK (Lowengart *et al.,* 1987). This study included 123 matched pairs of children whose fathers reported, by questionnaire only, occupational exposure to various compounds including MEK, chlorinated solvents, spray paints, dyes and pigments, and cutting oils. The study reported a statistically significant positive trend for risk of childhood leukemia based on father's frequency of use for all of the chemicals mentioned, including MEK. Paternal exposure to MEK also appeared elevated, but not statistically significantly so, for the period of paternal exposure after birth of the child but not during pregnancy or one year before pregnancy. This study is considered as an exploratory study, based solely on questionnaires with no other exposure information. Factors that could be confounding covariates such as exposures to other chemicals and personal lifestyle were not taken into account in the statistical analysis of this study.

Methyl ethyl ketone has been tested for activity in an extensive spectrum of *in vitro* and *in vivo* genotoxicity assays and has shown no evidence of genotoxicity in most conventional assays (National Toxicology Program, no date; World Health Organization 1992; Zeiger *et al.,* 1992). Methyl ethyl ketone tested negative in bacterial assays (both the *S. typhimurium* (Ames) assay, with and without metabolic activation, and *E. coli*), the unscheduled deoxyribonucleic acid (DNA) synthesis assay, the assay for sister chromatid exchange (SCE) in Chinese hamster ovary (CHO) cells, the mouse lymphoma assay, the assay for chromosome aberrations in CHO cells, and the micronucleus assay in the mouse and hamster. The only evidence of mutagenicity was mitotic chromosome loss at high concentrations in a study of aneuploidy in yeast *S. cerevisiae*; the relevance of this finding to humans is questionable. Overall, studies of MEK yield little or no evidence of genotoxicity.

Overall, the epidemiologic evidence is weak from which to draw conclusions about the carcinogenic risk in the human population. While none of the studies provides clear evidence of an increased cancer risk, with the totality of the evidence considered inconclusive, the data do provide some suggestion of an increased risk between multiple solvent exposures which include MEK and cancer, specifically childhood leukemia, bone cancer and prostate cancer. There is, however, an absence of positive results in the majority of mutagenicity and genotoxicity tests which are designed to indicate the potential for carcinogenicity, and there is a lack of structural features or alerts indicative of carcinogenic potential in SAR analysis. Based on these results we believe that MEK may not reasonably be anticipated to be carcinogenic.

Developmental toxicity was the basis for the IRIS RfC of 1 mg/m^3 which was verified in 1992. The critical study in the derivation of the RfC involved Swiss mice that were exposed to 0; 1,174; 2,978; or 8,906 mg/m^3 MEK for 7 hours per day during gestation days 6 through 15 (Schwetz *et al.,* 1991). Neither material nor developmental toxicity was observed at the low- or mid-doses. At the highest dose, there was a decrease in fetal body weight that was significant only in males. There was also a significant trend in the incidence of misaligned sternebrae when measured on a fetus but not a litter basis. At the highest dose, there was also an increase in relative liver and kidney weight, but the toxicological significance of that effect, if any, is reported in the IRIS as unknown. The lowest observed adverse effect level (LOAEL) for this study was 8,906 mg/m^3, and the no observed adverse effect level (NOAEL) was 2,978 mg/m^3.

The available data indicate that MEK is not likely to be a reproductive toxicant. There exists no inhalation reproductive toxicity study of MEK; however, an oral two-generation reproductive/developmental toxicity study of 2-butanol, a metabolic precursor to MEK, is available and is the basis for the oral reference dose (RfD) for MEK (Cox *et al.,* 1975). 2-Butanol is quantitatively converted to MEK within the body. In this two-generation study, administration of 2-butanol to rats in drinking water at concentrations as high as 3 percent (~5000 mg kilograms-day) did not affect reproductive performance, but did induce developmental effects consistent with the results from inhalation developmental toxicity studies in rodents. The absence of any pathological lesions in the reproductive organs of rats exposed to MEK by inhalation for 90 days to concentrations as high as 14,865 mg/m^3 also provides

some indication that MEK is not likely to be a reproductive toxicant.

The IRIS assessment of MEK states that at present, there is no convincing experimental evidence that MEK is neurotoxic ''* * * other than possibly inducing CNS (central nervous system) depression at high exposure levels.'' The IRIS documentation shows that no peripheral neurohistopathological changes were reported in rats exposed continuously to 3,320 mg/m^3 MEK for up to 5 months (Saida *et al.,* 1976). No treatment-related central or peripheral neurohistopathology was observed in rats exposed for 90 days (6 hours/day, 5 days/week) at concentrations of MEK as high as 14,865 mg/m^3, even among animals specifically prepared and examined for neurohistopathology (Cavender *et al.,* 1983). Also, ten of ten rats exposed to MEK at 17,700 mg/m^3 and higher for 8 hours/day, 7 days/week, died in the 7th week of exposure without neurological symptoms or histopathology (Altenkirch *et al.,* 1978).

Methyl ethyl ketone has been shown to potentiate neurotoxicity of other solvents in experiments with laboratory animals when both MEK and the other solvent are present in high concentrations. The EPA addressed the issue of interactions such as this in the text of the prospective RfC. We described several studies with human volunteers (*see* Dick *et al.,* 1992, and references therein) that have MEK exposure groups (at 100 parts per million (ppm) coexposed to relatively low levels, also around 100 ppm) of several other solvents including acetone, methyl isobutyl ketone and toluene. At least for the brief exposure periods in those studies (around 4 hrs), the authors observed no evidence of neurotoxic interactions. However, a recent review (Noraberg and Arlien-Soborg, 2000) reports evidence of possible interactions even at occupational concentrations below the threshold limit values (TLV) (200 ppm, 590 mg/m^3) in solvent mixtures containing MEK at 200–300 ppm and n-hexane at 60 ppm. This point should be considered when evaluating mixtures of solvents, especially those containing MEK and the solvents listed above, especially n-hexane. However, the lower limits of MEK exposure that may result in potentiation with other solvents have not been well established, and the potential of MEK in this regard remains a concern, although a minor one. Such concerns are especially diminished at the low-levels we are concerned with in this assessment (*i.e.,* much less than 590 mg/m^3).

The petition presents a short-term criterion of 33 mg/m^3, which is an adjustment of their RfC of 3.3 mg/m^3. The petitioner calculated this value by simply eliminating the uncertainty factor of ten that is used for extrapolating from subchronic to chronic exposure in the RfC. We do not agree that this is an appropriate method of arriving at an short-term human health effects criterion, however, currently there is no EPA human health criterion for short-term exposures available for us to use in an analysis.

There are 1999 California Environmental Protection Agency (CalEPA) short-term health criteria (CalEPA 1999). The CalEPA published three levels of acute reference exposure levels (REL) to protect against mild adverse effects (associated with a 1-hour exposure), severe effects (associated with a 7-hour exposure), and life threatening effects (associated with a 1-hour exposure). The REL for mild effects is 13 mg/m^3, for severe effects it is 32 mg/m^3, and for life threatening effects it is 1,385 mg/m^3. For the purposes of our analysis and decision, we focused on the mild REL, to be health protective. The CalEPA acute REL to protect against mild effects is based on the study of Nakaaki (1974). However, we consider the results with MEK from the studies of Dick *et al.* (1984, 1988, 1989, 1992) to be more scientifically defensible for the purposes of our analysis. Compared to the Nakaaki study, the Dick *et al.* studies tested more subjects (20+ per study versus four), used control groups extensively, better controlled the exposures (constant in the Dick *et al.* studies versus increasing concentrations in Nakaaki), analyzed a greater number of endpoints, and apparently longer duration exposures. Collectively, the volunteer studies of Dick *et al.* indicate that exposures to MEK of up to 200 ppm (590 mg/m^3) and up to 4 hours would be an acceptable nonadverse effect concentration in the general population for both subjective effects (such as objectionable odor or irritancy) and for neurobehavioral effects. We would expect the same nonadverse effect concentrations to be relevant for children, as there is no reason to consider children as a sensitive subgroup for such a highly subjective, nonadverse effect as mild irritancy.

C. Determination of an Appropriate Health Effects Criterion for Chronic Noncancer Effects

For risk assessments which estimate chronic noncancer effects from inhalation exposures, the IRIS inhalation RfC is the primary quantitative consensus value used by the Agency.

The RfC for MEK of 1 mg/m^3 was placed on IRIS in 1992. It was derived from the Schwetz *et al.* (1991) developmental toxicology study by dividing the NOAEL (2,978 mg/m^3) by a series of uncertainty factors (UF). The UF for the determination of the MEK RfC was 3,000. This overall uncertainty factor reflects uncertainties in interspecies extrapolation (UF=10), sensitive individuals (UF=10), and an incomplete database, including a lack of chronic and reproductive toxicity studies (UF=10). In addition, a modifying factor (MF=3) was used to account for the absence of unequivocal data for portal-of-entry effects. This resulted in a combined UF and MF of 3,000.

It is Agency policy that the IRIS represents a starting point for risk assessments, however, it is not given conclusive weight in the context of rulemaking. If an outside party questions information presented in the IRIS, we will consider all credible and relevant information before us in the course of making our decision.

Accordingly, the petitioner reviewed the IRIS RfC in light of guidelines published by EPA in 1994, which addressed and updated methods for calculating RfC. Applying these guidelines to the same critical IRIS developmental study used to derive the IRIS RfC, which used the older methodology, the petitioner proposed a revised health criterion based on a reduction of the MEK uncertainty factor for interspecies extrapolation. This involved a reduction of the interspecies UF of 10 to a default value of 3. The reduction in the interspecies UF is consistent with the guidelines and is warranted if standard default dosimetric adjustments are incorporated in the original study. As a result, the petitioner proposed a revised RfC value of 3.3 mg/m^3 (which we view as being equivalent to 3 mg/m^3 since EPA generally expresses the RfC as a whole number).

The EPA's Office of Research and Development (ORD) reviewed the petitioner's proposed revision to determine whether such an alternative RfC was appropriate. That review indicated that the method that the petitioner applied to derive the criterion was consistent with both EPA policy and guidance. However, ordinarily, it is Agency policy that revisions in the IRIS are performed such that the entire database is simultaneously reevaluated for all effects and for all routes of exposure. This is done for both administrative efficiency and to ensure that we evaluate the breadth of available science.

Subsequently, EPA announced in the **Federal Register** (67 FR 1212, January 9, 2002) that it would undertake a formal IRIS review of MEK. The announcement recognized that in the decade since the initial IRIS assessment of MEK, substantive alterations in the Agency's methods for dose-response assessments have occurred. The estimated completion date for the assessment, including peer review and external peer review is September 2003. We will consider the results of that review prior to taking any final action related to the proposed rule.

In the meanwhile, to support statutory requirements and assist in the determination of the technical merits of the petition to delist MEK, EPA's ORD initiated a parallel undertaking to derive an interim health effects threshold for MEK inhalation exposure that incorporates consideration of current data and current EPA science policy. This process has resulted in the derivation of a prospective RfC of 9 mg/m^3. The analysis underlying the development of this prospective RfC can be found in ''A Prospective Reference Concentration for MEK (78–93–3)'' which is in the docket for today's proposed action.

We consider this prospective RfC to be the most complete and current dose-response information on MEK and, therefore, have determined that it is the appropriate chronic noncancer health effects criterion for EPA to use in today's proposal to remove MEK from the HAP list. In our final evaluation about the potential for MEK to cause noncancer health effects, we will rely on the final RfC and other information resulting from the completed IRIS assessment. Thus, we will not take final action on today's proposed rule until such information becomes available. In today's action, we request comment generally on our prospective RfC and on the portion of our human health risk characterization based on this RfC. Also, because we recognize that there is some possibility that the RfC may change, we solicit comment on whether it would be appropriate for the Agency to delist MEK if the final RfC is different from the prospective RfC; for example, if it is finalized at 3 mg/m^3, the level suggested by industry in its petition, or if it remains unchanged from the 1992 RfC of 1 mg/m^3.

The prospective RfC is based on the same critical study as the 1992 IRIS. Consistent with recent Agency recommendations for developing RfD and RfC, the assessment incorporates a duration adjustment to the critical study's NOAEL. This approach adjusted the discontinuous inhalation exposure (7 hours per day) in the critical study to a continuous (24 hours per day) duration. This procedure is premised on a simple concentration x time relationship, and it had the effect of reducing the adjusted NOAEL to 863 mg/m^3 from the value of 2,978 mg/m^3 used in developing the 1992 RfC.

Using the adjusted NOAEL, the assessment derives a human equivalent concentration (HEC) for MEK. The HEC represents an external air concentration estimated to achieve the same blood levels in humans and animals. Based on the available blood-to-air coefficient data for MEK in animals and humans, EPA applied the default factor of one for this derivation which resulted in a $NOAEL_{HEC}$ of 863 mg/m^3. As with the standard IRIS assessment, EPA applied uncertainty factors to the $NOAEL_{HEC}$ to account for recognized areas of uncertainty in extrapolating the data to the appropriate human scenario. The EPA concluded that the 1992 IRIS interspecies uncertainty (UF=10) and the modifying factor (MF=3) should be revised. However, we concluded that the intraspecies uncertainty (UF=10) should remain unchanged.

The EPA applied the Agency's 1994 RfC methodology to the prospective RfC which results in an interspecies uncertainty factor of three. The prospective RfC also eliminates the previous modifying factor (MF=3) included in the 1992 IRIS to account for the absence of unequivocal data for portal-of-entry (respiratory tract) effects. This revision was, in part, due to additional information in a 1992 National Institute for Occupational Safety and Health (NIOSH) study in which 24 volunteers exposed to 590 mg/m^3 of MEK for 4 hours reported no net complaints of even minor irritation. The consequence of that study was a decrease in the uncertainty around irritant type of portal-of-entry effects in humans.

The prospective RfC also addresses the 1992 IRIS database uncertainty factor (UF=10). The assessment states that the problematic situation that existed in 1992 persists; namely, the difficulty of establishing a health-based guideline for a lifetime chronic exposure without any toxicity studies involving lifetime chronic exposures. The existing long-term repeated exposure experiments have certain flaws that affect their use in developing an inhalation RfC. However, the assessment concludes that EPA can use information from existing studies, as well as ancillary information from new sources, to reduce the concerns in the database. The assessment concludes that the analysis, coupled with the totality of the other available information, has the overall effect of reducing uncertainty in the database such that it is appropriate to apply a partial database uncertainty factor of three, rather than a full database uncertainty factor of ten, in developing the prospective RfC.

This reduction, taken with the reduction in interspecies UF and the elimination of the modifying factor, reduced the composite uncertainty from 3,000 to 100. Therefore, EPA concludes that the prospective RfC is 9 mg/m^3.

D. Human Health Risk Characterization and Conclusions

Methyl ethyl ketone is currently listed in IRIS based on a 1989 evaluation as ''not classifiable as to human carcinogenicity'' according to the 1986 Cancer Guidelines. The IRIS summary identified the lack of both animal and human data to assess the carcinogenic potential of MEK, and at the current time, animal cancer bioassays with MEK by either the oral or inhalation route are still lacking, and there are no indications that such studies are either ongoing or planned. However, genotoxicity information does not indicate any readily apparent genetic mechanism of action for MEK, and the existing genotoxicity tests for MEK are essentially negative. In addition, structural data on MEK do not support any readily apparent basis for a carcinogenic hazard.

The retrospective cohort studies of worker populations exposed to MEK provide no clear evidence of a cancer hazard in these populations. Because of various study limitations, these studies are weak and cannot support conclusions about the carcinogenic potential of MEK in humans. A case-control study examining the association between paternal exposures to several solvents including MEK and childhood leukemia is exploratory in scope such that we cannot use the results to reliably support the existence of any such association. Overall, this epidemiologic evidence is inconclusive and weak from which to draw conclusions about carcinogenic risks in the human population, although there is some suggestion between increased risk for some cancers and multiple solvent exposures, which included MEK. However, we consider the inconclusive nature of these studies to be offset by more conclusive results regarding the low potential of MEK to be carcinogenic, including the overall lack of positive results from genotoxicity tests and mutagenicity tests, and the lack of any indication of carcinogenicity from structure-activity relationships. Consequently, we conclude that we may

not reasonably expect MEK to be carcinogenic.

In the analysis, we use a hazard quotient (HQ) approach to characterize the chronic noncancer risk associated with the exposure to MEK. The HQ is the ratio of a level of exposure for a given substance over a specific time period to a health criterion or reference level for that substance derived from a similar exposure period. We use the maximum annual average ambient concentration as the exposure for the purposes of the chronic HQ calculation. We use EPA's prospective RfC as the chronic health criterion, and we also calculate an HQ using the petitioner's RfC. These criteria encompass a 70-year lifetime of continuous exposure and address the health effect of concern due to chronic inhalation exposures to MEK. In addition, the criteria include the margins of safety built into the IRIS RfC and are, therefore, protective of sensitive subpopulations.

Based on our evaluation of the modeling data presented in the petition, we judge that maximum ambient annual exposures from stationary sources to MEK are not likely to exceed 1 mg/m^3. Using EPA's prospective RfC of 9 mg/m^3, the HQ for the maximum annual average ambient exposure to MEK is 0.1. This means that a person's maximum exposure would be 10 percent of the RfC.

We judge that the exposures to MEK of actual persons living in the immediate vicinity of an MEK emission source would more typically be at least a factor of two to ten less than 1 mg/m^3. Therefore, replacing the maximum ambient concentration with a more realistic exposure scenario yields an HQ less than 0.1. Based on the current information, and given the conservative nature of the parameters used to estimate the maximum exposure, the protective nature of the prospective RfC, and because the petition and subsequent analyses characterize the vast majority of MEK exposures from stationary sources, we conclude that by applying the prospective RfC of 9 mg/m^3, potential ambient exposures to MEK may not reasonably be anticipated to cause adverse human health effects.

With regard to the potential for short-term exposures to MEK to result in adverse health effects, we draw a qualitative conclusion. From the petition's modeled 24-hour maximum concentration of 10 mg/m^3, and using the conversion factor from EPA's SCREEN3 model User's Guide, we estimate that the maximum 1-hour concentration would not exceed 25 mg/m^3. From the Dick *et al.* study, we see that exposures to MEK of up to 590 mg/m^3 and up to 4 hours did not cause adverse effects to human subjects. While we have not developed a short-term human heath criterion from that study, we consider the gap between the adverse effects level in the Dick *et al.* study and the 24-hour and 1-hour concentrations to be large enough that we may not reasonably anticipate adverse effects to occur from these exposures. Further, as we state above, we consider the maximum annual average concentration estimates to be overestimates of true exposure. Given that the 24-hour and 1-hour ambient air concentrations were estimated using the same information and methods as the annual average concentrations, we consider these short-term concentrations to be similarly conservative. This provides us with additional confidence that adverse effects from short-term exposures will not occur.

As discussed previously, we will consider the final RfC that results from the IRIS review and substantive public comment as that information becomes available. In addition, we expect to receive information on MEK from industry's submittal to the Agency's Voluntary Children's Chemical Evaluation Program (VCCEP). The VCCEP is intended to provide information to enable the public to understand the potential health risks to children associated with exposures to certain chemicals. Under that program, EPA has asked industries which manufacture or import certain chemicals to develop assessments regarding the potential health effect, exposures, and risks of those chemicals to children. We anticipate industry's submission to the first tier of the VCCEP program will be available during 2003, and we will consider this information when submitted, along with other information and comments we receive, before taking final action on the proposal.

Given the current data, however, we are confident that in applying the prospective RfC of 9 mg/m^3 to ambient annual average concentrations of 1 mg/m^3 or less, we may not reasonably anticipate MEK to cause chronic adverse human health effects. Neither may we reasonably anticipate adverse effects to occur from short-term exposures.

E. Ecological Risk Characterization and Conclusions

Our review of the petition's ecological risk characterization supports the findings that MEK has limited persistence in water, soil, and air. We further agree that it has a low octanol/water coefficient, a low adsorption coefficient, and a low bioconcentration factor; therefore, given the available data, it is not anticipated to persist or accumulate in the environment.

A review of the general literature, including EPA databases, indicates that MEK has low environmental toxicity. For example, the daphnid 48-hour lethal concentrations for 50 percent of the testing sample (LC50) range from 2,200 to 5,091 ppm; the green algae 96-hour effective concentration for 50 percent of the population is 1,200 ppm; and the fish 96-hour LC50 ranges from 2,300 to 3,200 ppm. The fish chronic values range is 220 ppm, the daphnid chronic value is 521 ppm, and the algal chronic value is 45 ppm. These concentrations are significantly higher than what we would expect to see in the environment.

The petition included no data on the potential for ecological effects to occur as a result of exposures to media other than water. There are no available data on avian exposure to MEK from the air pathway. There are also no available data on air exposure to plants from MEK. However, there is a database on laboratory mammals regarding air exposures to MEK from which we routinely extrapolate to draw conclusions regarding potential health effects to humans. From this database, we draw a similar conclusion regarding the potential for adverse health effects in mammals that may be exposed to ambient levels of MEK as we did for humans.

Based on our review of all pertinent data supplemented by additional environmental modeling, we have concluded that there are sufficiently adequate data on environmental effects of MEK to determine that ambient concentrations, bioaccumulation, or deposition of MEK may not reasonably be anticipated to cause adverse environmental effects.

F. Transformation Characterization

Methyl Ethyl Ketone is one of several volatile organic compounds (VOC) that transform into acetaldehyde and formaldehyde in the ambient air. Both acetaldehyde and formaldehyde are HAP and classified as probable human carcinogens. Based on a simplified analysis, the petitioner concluded that the contribution to ambient concentrations of acetaldehyde and formaldehyde from MEK transformation is insignificant. This conclusion is largely based on the knowledge that MEK's half-life, about 9 days, is comparatively longer than its transformation products, acetaldehyde and formaldehyde, whose half-lives are about 14 hours and 3 hours, respectively. This implies that MEK's

transformation products disappear much faster than they are formed. Our evaluation, summarized below, concurs with the petitioner's conclusion that atmospheric transformation of MEK emissions may not reasonably be anticipated to cause adverse effects to human health.

First, we assessed whether there would be elevated ambient concentrations near individual sources of MEK. Next, we estimated the ambient concentrations of these HAP resulting from transformation of MEK from multiple sources in urban areas. We then estimated the potential for any of these concentrations to cause adverse human health effects. Since the atmospheric chemistry for these pollutants is complex and not fully understood, we made conservative assumptions in the analysis in order to over- rather than under-estimate the concentrations of acetaldehyde and formaldehyde that could result from MEK transformation. Please refer to the docket for our complete analysis.

In the first step of the analysis, we applied tier 1 dispersion modeling (SCREEN3) to the worst-case facility presented in the petition, and assuming a conservative average wind speed of 3 miles per hour, we determined that the MEK plume from any given source will travel about 650 miles over MEK's 9-day half-life. Even at one tenth this duration (*i.e.,* about 21 hours), still assuming a wind speed of 3 miles per hour, the plume will have traveled about 63 miles. In this plume, we estimated the unreacted MEK concentration after 21 hours to be approximately 1.6×10^{-3} mg/m^3.

As it disperses, MEK transforms relatively slowly into acetaldehyde and formaldehyde and, in turn, these compounds decompose much more quickly into by-products, including carbon dioxide, carbon monoxide, and water. We estimated that about 7 percent of the MEK would have transformed into acetaldehyde and possibly formaldehyde after 21 hours. Accordingly, we estimated that the maximum concentrations of acetaldehyde and formaldehyde due to MEK transformation at this point (21 hours after being emitted) would be roughly 7×10^{-5} mg/m^3 and 5×10^{-5} mg/m^3, respectively. For acetaldehyde, that translates into a lifetime excess cancer risk of 1×10^{-7}. For formaldehyde, the lifetime excess cancer risk is 7×10^{-7}. Calculating noncancer hazard quotients, we see that the HQ for acetaldehyde is 0.008. This means that the level of acetaldehyde to which people are exposed is 0.8 percent of the RfC. For formaldehyde, the HQ is 0.005, which means that the exposure level is 0.5 percent of the appropriate reference level, the Maximum Risk Level (MRL) [1]. Thus, since the cancer risks associated with the transformation products are below 1 in 1 million, and the noncancer exposures are less than 1 percent of the reference concentrations, we may not reasonably anticipate adverse health effects to occur from transformation of MEK into acetaldehyde and formaldehyde around MEK emissions sources. We note here that risk levels in the upwind part of the plume (*i.e.,* the risks from the transformation products close to MEK emission sources) must be lower than what we estimated since the analysis did not account for degradation of acetaldehyde and formaldehyde. Further, we note that typical ambient levels of MEK are higher than they are in the plume at this point, indicating that the ''plume,'' as such, would no longer exist, having already merged indistinguishably with the ambient background. This turns our attention to the analysis of transformation products in the ambient background.

To evaluate the potential of acetaldehyde and formaldehyde to form from ambient concentrations of MEK significantly downwind of multiple emission sources, we looked at ambient monitoring data to determine the typical ambient level of MEK in urban environments. We then estimated the maximum concentrations of acetaldehyde and formaldehyde that could be transformed from this MEK, using conservative, steady-state assumptions. Based on available monitoring information, we determined that at the 95th percentile, the ambient concentration of MEK is 4.3×10^{-3} mg/m^3. Using an estimated degradation rate of 14 times greater than MEK for acetaldehyde, we estimated the ambient concentrations of acetaldehyde from transformed MEK to be 1.8×10^{-4} mg/m^3. For formaldehyde, we estimated that it degrades at a rate of 72 times faster than MEK and, thus, calculated that the ambient concentration due to MEK transformation is 2×10^{-5} mg/m^3. These very small concentrations do not represent significant health threats as they translate into lifetime excess cancer risks of 4×10^{-7} for acetaldehyde and 3×10^{-7} for formaldehyde.

We do not expect adverse noncancer health effects to occur from the transformation of MEK. The HQ for acetaldehyde is 0.02 which corresponds to an exposure which is 2 percent of the RfC. For formaldehyde, the resulting HQ is 2×10^{-3} which represents an exposure of 0.2 percent of the MRL. Therefore, we may not reasonably anticipate adverse noncancer effects to occur due to exposures to these outdoor ambient concentrations of acetaldehyde or formaldehyde. Based on the analysis, we conclude that atmospheric transformation of MEK into acetaldehyde and formaldehyde may not reasonably be anticipated to cause significant human health risks.

[1] There is no EPA RfC for formaldehyde. However, the Agency for Toxics Substances and Disease Registry has calculated a noncancer health effects level, called a MRL. The MRL for formaldehyde is 0.01 mg/m^3.

G. Public Comments and EPA Responses

As part of the notice announcing receipt of a complete petition to delist MEK (64 FR 33453, June 23, 1999), we requested interested parties to provide us with data or comments. Copies of the public comments have been included in the docket for this action and have been considered in our review of the petition. Substantive comments are discussed below.

Comment. One commenter expressed concern about the overall appropriateness of the IRIS RfC as a decision criterion for determining human health effects. The commenter maintained that the IRIS RfC is itself uncertain and, therefore, the petitioner's proposed revision is without merit. To support this position, data from a single long-term toxicity study which included MEK was cited. That study was published since the IRIS validation and reports adverse health effects as measured by decreased neural condition velocities for a set of workers (41 exposed, 63 controls) exposed over a period of 14 ± 7.5 years to levels of MEK ranging from 149 to 342 mg/m^3.

Response. The EPA's National Center for Environmental Assessment (NCEA) and National Health and Environmental Effects Research Laboratory (NHEERL) reviewed the referenced study as a part of our technical review. Their review demonstrated that the study has multiple and serious methodological shortcomings that greatly reduce its meaningfulness. Very few methodological details were presented in the study, making it virtually impossible for EPA reviewers to determine what had been done. It is not clear what factors were ''matched'' when the control groups were selected or how comparable the groups were on factors other than age. In addition, the study did not include important factors that are relevant to interpreting the results, including such factors as the type of work (*e.g.,* office versus physical work); lifestyle factors (*e.g.,* drinking, smoking, etc.); and height and weight of the subjects (important for nerve

conduction). Also, the study did not specify the experimental procedures that it applied, including whether the subjects were tested at the same location and time as the exposed workers, or whether the examiners were aware of the exposure status of the subjects at the time of testing. Importantly, the study did not address the control of temperature, a critical factor in nerve conduction studies, and the reported pattern of nerve conduction results is not entirely consistent with the reported peripheral neuropathy.

Of primary importance in EPA's review was the consideration of the extent to which the study's findings are supported by the existing scientific literature. In this regard, we conclude that the study cited in the comment is inconsistent with a large volume of high quality neurotoxicological scientific evidence. In fact, animal models of the reported condition are excellent predictors of human neuropathy. MEK has been well tested for the reported condition and is convincingly negative.

Comment. The EPA received a comment expressing concern over MEK's role in potentiating the effect of other substances. The comment stated that given the ''ubiquitous'' ambient concentration of certain pollutants and general lack of understanding of the mechanisms of potentiation, it would be inappropriate for the Agency to allow an increase in ambient concentrations of MEK.

Response. As described in this preamble, MEK has been shown to potentiate neurotoxicity of other solvents in experiments with laboratory animals when both are present in high concentrations. The lower limits of MEK exposure that may result in potentiation with other solvents have not been well established in animals, and the potential of MEK in this regard remains a concern, although a minor one.

H. Other Issues

Since the receipt of the petition, MEK has been measured in the blood of the general population as reported from the National Health and Nutrition Examination Survey (NHANES) database. The NHANES database reports median blood levels of 5.4 parts per billion (ppb) and levels at the 95th percentile of 16.9 ppb. The EPA estimates that it would take continuous exposures at ambient concentrations near 1 mg/m^3 of MEK to result in the reported median blood level.

However, based on the available information, EPA believes it is reasonable to expect that the reported blood levels did not result from an air exposure to MEK at the prospective RfC. Primarily, this is because concentrations of MEK found in the immediate vicinity of large MEK emissions sources are below the RfC, and as previously stated in today's action, typical ambient background concentrations of MEK are several orders of magnitude lower than the prospective RfC.

In addition, although MEK has been shown in animal studies to be readily absorbed, it is also rapidly metabolized, mostly in the liver. The excretion half-life of MEK is quite short, on the order of minutes to hours (Liira *et al.,* 1988), and is nearly quantitatively complete in both animals and in humans. The data indicate that internal doses following experimental air exposures to MEK consist mostly of metabolites that are cleared quickly. Therefore, tissue and blood levels of MEK would become minimal shortly after termination of experimental air exposures due to kinetics and solubility of MEK. Likewise, for those persons exposed to relatively high concentrations of MEK, blood levels would fall relatively quickly to pre-exposure levels following the termination of exposure.

Consequently, it is the judgment of scientists from both the Centers for Disease Control (CDC), who compiled the NHANES database, and EPA that the data are not representative of atmospheric exposure of national proportions. These authors also state that blood levels of both MEK and acetone are highly variable as a result of their physiologic metabolism and do not reflect environmental exposures very well (Churchill *et al.,* 2001). Thus, it is more likely that the reported MEK in human blood is a by-product of normal human metabolism.

Another issue we addressed in today's action is that of MEK as an ozone precursor. The EPA recognizes that MEK is an ozone precursor, but after considering this issue, we determined that it is inappropriate to include a substance on the HAP list under CAA section 112(b) due entirely to its tendency to form ozone. Section 112(b) provides that no air pollutant which is listed under CAA section 108(a), such as ozone, may be added to the HAP list. It further provides that a pollutant that is a precursor to a pollutant listed under section 108(a), such as MEK, may not be included on the HAP list unless it independently meets the HAP list criteria. As explained in today's action, we believe that the petitioner has demonstrated that MEK does not independently meet the criteria for listing as a HAP under section 112 of the CAA.

The Agency has previously determined that MEK could not be removed from the list of pollutants under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (63 FR 15195). However, the EPCRA list serves a very different purpose than the list of HAP under section 112(b) of the CAA. Specifically, the EPCRA—which is intended to provide information regarding the emissions of air pollutants generally—deals collectively with HAP, VOC, and other air and water pollutants under section 313 by providing for the listing of any pollutant that may reasonably be anticipated to cause adverse effects to human health or the environment. The CAA, on the other hand, establishes requirements for reducing the emissions of air pollutants and deals separately with HAP (which are to be listed and regulated under section 112) and criteria air pollutants (which are to be listed under section 108 and regulated under various other sections of the CAA). The EPA is required to regulate precursors to criteria air pollutants, such as VOC, for their contributions to ambient levels of criteria pollutants under statutory provisions that do not apply to HAP. This dual structure would lose its significance if EPA were to include substances on the HAP list solely as a result of their contribution to concentrations of criteria air pollutants.

The decision to grant the petition and issue a proposed rule to delist MEK removes MEK from regulatory consideration under section 112(d) of the CAA. Section 112 requires the development of maximum achievable control technology (MACT) standards to reduce routine emissions of listed toxic air pollutants. The proposed rule does not affect MEK's status under the CAA as a VOC, and EPA will continue to regulate it as such. In ozone nonattainment areas, sources of MEK emissions must continue to meet applicable standards identified in State implementation plans (SIP).

In addition, the proposed rule does not impact any MEK reporting requirements under the TRI (EPCRA, section 313). Recognizing that MEK is one of the largest sources listed in the TRI, the Agency will continue to track emissions of MEK. Further, under the CAA, the Agency has the option to add MEK back onto the HAP list and will do so should a need arise.

I. Discussion and Conclusion

Uncertainty is an inherent part of risk assessment. It arises because risk assessment is a complex process, requiring the integration of multiple factors. In the analysis, uncertainty arises for the following reasons. The

IRIS dataset used to derive the human health effects decision criterion is imperfect and leads to uncertainty in the RfC. This uncertainty is primarily due to the lack of long-term MEK toxicity data and is compensated for in the application of an uncertainty factor of 100 for the prospective RfC. In addition, animal cancer bioassays with MEK by either the oral or inhalation route are lacking from the database, and there is scientific uncertainty in MEK's ability to potentiate the action of other neurotoxins. We also recognize that there is uncertainty in the computer models used to predict the fate and transport of MEK in the environment. These models are simplifications of reality and some variables are excluded.

For decisions which are based largely on risk assessments, some degree of uncertainty is acceptable. Such is the case for this delisting decision. We do not interpret CAA section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms ''adequate'' and ''reasonably'' indicate that the Agency must weigh the potential uncertainties and their likely significance. To this end, the assessment applies conservative assumptions to bias potential error toward protecting human and ecological health. Thus, EPA is confident that even when we consider the uncertainties in the petition's initial assessment and in the additional analyses, the results are more likely to over-estimate rather than under-estimate true exposures and risks.

Based on our evaluation of the petition and the subsequent analyses, we judge that the potential for adverse human health and environmental effects to occur from projected exposures is sufficiently low to provide reasonable assurance that such adverse effects will not occur. For example, the petitioner appropriately applied EPA's model guidelines and EPA's tiered dispersion modeling approach which we designed to be conservative. Also, EPA suggested that the petitioner conduct an additional, more site-specific analysis to verify the conservatism of the original analysis. The results of that analysis increased our confidence that the petition over-rather than under-estimates exposure. In addition, the petition did not apply a formal exposure assessment to the predicted ambient air concentrations. Instead, the petition used the air concentrations alone as a surrogate for exposure. Based upon the likely proximity of inhabitable areas and knowledge of human activity patterns, we believe that actual exposures will be far less than predicted exposures that were derived from the dispersion analysis. Further, when modeling clusters of MEK sources, the petition showed that concentrations resulting from that scenario are not likely to adversely affect health. Finally, available data from monitors suggest that ambient concentrations of MEK in urban areas are over two orders of magnitude lower than the modeled maximum concentrations.

As described above, EPA's proposed decision to delist MEK is based on the results of a risk assessment demonstrating that emissions of MEK may not reasonably be anticipated to result in adverse human health or environmental effects. In addition to the analyses presented and the uncertainties inherent in risk assessment, we have considered other information related to MEK in making this decision, namely the transformation of MEK into acetaldehyde and formaldehyde and recently discovered levels of MEK in human blood. The MEK decomposes in the ambient air into two probable human carcinogens (acetaldehyde and formaldehyde). However, given that the actual contribution of MEK to ambient concentrations of these two pollutants is very small, and that they decompose rapidly, we do not anticipate that MEK transformation into these two pollutants will be significant enough to have an adverse impact on human health. We do not expect that ambient concentrations of MEK contribute significantly to the blood level burden due to the small ambient concentrations of MEK in ambient air.

We also considered the fact that MEK is one of the top compounds by volume reported in the TRI. Under this proposal, it would no longer be regulated as a HAP, but it will continue to be reported in the TRI and regulated under EPA's criteria pollutant (ozone) program.

As discussed previously, we will consider the RfC that results from the IRIS review and information combined in industry's submission under tier 1 of the VCCEP before taking final action on the proposal. We also welcome additional data or information that can further clarify these and other issues related to MEK. We will evaluate all substantive information received during the comment period prior to taking any final action on the proposed rule.

V. References

References cited in the preamble can be viewed in the docket for this proposed rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive 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 adverse affect in a material way the economy, a sector to 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 obligation 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.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed action does not constitute a ''significant regulatory action'' and is, therefore, not subject to OMB review.

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.* The proposed action will remove MEK from the CAA section 112 (b)(1) HAP list and, therefore, eliminate the need for information collection under the CAA. 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The 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 business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services (NAICS 8711–98) operations that earn less than $20 million annually; (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.

After considering the economic impact of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule will eliminate the burden of additional controls necessary to reduce MEK emissions and the associated operating, monitoring and reporting requirements. We have, therefore, concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, 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 1 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 proposed rule contains no Federal mandates for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the proposed 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 1 year. Because the proposed rule removes a compound previously labeled in the CAA as a HAP, it actually reduces the burden established under the CAA. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (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.''

Under Executive Order 13132, EPA may not issue a regulation that has 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 governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's proposed rule removes the substance MEK from the list of HAP contained under section 112(b)(1) of the CAA. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed 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.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. A review of the available emission inventory does not indicate tribal MEK emissions sources subject to control under the CAA, therefore, the proposed rule is not anticipated to have tribal implications. In addition, the proposed action will eliminate control requirements for MEK and, therefore, reduces control costs and reporting requirements for any tribal entity operating a MEK source subject to control under the CAA which we might have missed. Thus, Executive Order 13175 does not apply to the proposed rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is based on the fact that the RfC is determined to be protective of sensitive sub-populations, including children. Also, the single study cited during public comment to indicate a potential effect on children has been reviewed during this petition process and found to be limited in design and execution. Consequently, we determined that the study was of insufficient quality to provide information regarding health risks (leukemia) of MEK to children. However, as we state above, we anticipate industry's submission to the first tier of the VCCEP program will be available during 2003, and we will consider this information when submitted. In addition, the public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to MEK.

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

Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' The proposed rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 22, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart C—[Amended]

2. Subpart C is amended by adding § 63.61 and reserving §§ 63.62 through 63.69 to read as follows:

§ 63.61 Deletion of methyl ethyl ketone from the list of hazardous air pollutants.

The substance methyl ethyl ketone (MEK, 2-Butanone) (CAS Number 105602) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

§§ 63.62–63.69 [Reserved]

[FR Doc. 03–13428 Filed 5–29–03; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.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.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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