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Contents

Federal Register

Vol. 68, No. 156

Wednesday, August 13, 2003

Agricultural Marketing Service
RULES
Nectarines and peaches grown in—
California, 48251–48256
PROPOSED RULES
Commodity laboratory testing programs:
Cottonseed chemist licensing program, testing laboratories addresses, and information symbols, 48322–48326
NOTICES
Committees; establishment, renewal, termination, etc.:
National Organic Program Peer Review Panel Technical Expert, 48334–48335

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48442

Army Department
See Engineers Corps

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48336

Centers for Medicare & Medicaid Services
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Virginia, 48392–48393

Children and Families Administration
See Refugee Resettlement Office

Coast Guard
RULES
Ports and waterways safety:
Bogue Sound, NC; safety zone, 48284–48286
Tacoma Narrows Bridge, WA; safety zone, 48282–48284
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48403–48405
Meetings:
Towing Safety Advisory Committee, 48405
Navigable waters and jurisdiction; proposed navigability status change:
Lake Fontana, NC, 48406

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See International Trade Administration
See National Institute of Standards and Technology
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48335

Comptroller of the Currency
RULES
Practice and procedure:
Accountants performing audit services; removal, suspension, and debarment, 48256–48274

Copyright Office, Library of Congress
NOTICES
Cable royalty funds:
Cable statutory licenses; Phase I or II controversy ascertainment; fees distribution, 48415–48417

Customs and Border Protection Bureau
RULES
Vessels in foreign and domestic trades:
Tonnage duties, 48279–48280
PROPOSED RULES
Vessel cargo manifest information; confidentiality protection; withdrawn, 48327–48331

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48343–48344
Committees; establishment, renewal, termination, etc.:
Defense Finance and Accounting Service Performance Review Board, 48344

Economic Analysis Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Bureau of Economic Analysis Advisory Committee, 48336

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48346–48347

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48414–

Energy Department
See Federal Energy Regulatory Commission
See National Nuclear Security Administration

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Los Angeles County, CA; Pier J South Marine Terminal Expansion Project, 48344
Environmental statements; notice of intent:
Riverside County, CA; River Road Treatment Wetlands Project, 48344–48346

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Diallyl sulfides; correction, 48312–48313

Hydramethylnon, 48302–48312
Tralkoxydim, 48299–48302
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 48314–48321
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 48331–48332
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities, 48471–48513
NOTICES
Air quality; prevention of significant deterioration (PSD):
Pemit determinations—
Alcoa-Warrick Power Plant, IN, 48359
Integrated risk information system:
Health effects of chronic exposure to chemical substances—
Chemical substance additions to 2003 program and nominations for 2004 program; information and nominations requests, 48359–48362
Pesticide, food, and feed additive petitions:
BASF Corp., 48362–48366
Interregional Research Project (No. 4), 48367–48373
Syngenta Crop Protection, Inc., 48373–48377
Valent U.S.A. Corp., 48377–48383
Superfund; response and remedial actions, proposed settlements, etc.:
Amenia Town Landfill Site, NY, 48383–48384
Water pollution control:
Great Lakes System; bioaccumulative chemicals of concern mixing zones prohibition approved; water quality guidance, 48384–48385
U.S. waters; pesticides application; jurisdictional issues, 48385–48388

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Learjet, 48274–48275
Standard instrument approach procedures, 48276–48279
PROPOSED RULES
Airworthiness directives:
Rolls-Royce Corp., 48326–48327
NOTICES
Exemption petitions; summary and disposition, 48439–48441

Federal Communications Commission
RULES
Practice and procedure:
Regulatory fees (2003 FY); assessment and collection, 48445–48469
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48388–48391

Federal Deposit Insurance Corporation
RULES
Practice and procedure:
Accountants performing audit services; removal, suspension, and debarment, 48256–48274

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 48357–48358
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 48347
CenterPoint Energy Gas Transmission Co., 48348
Dauphin Island Gathering Partners, 48348–48349
Dominion Cove Point LNG, LP, 48349
Eastern Shore Natural Gas Co., 48350
El Paso Natural Gas Co., 48350
High Island Offshore System, L.L.C., 48350
Iroquois Gas Transmission System, L.P., 48351
Kern River Gas Transmission Co., 48351–48352
KeySpan LNG, LP, 48352
Midwestern Gas Transmission Co., 48352
Mojave Pipeline Co., 48352–48353
National Fuel Gas Supply Corp., 48353–48354
Natural Gas Pipeline Company of America, 48354
Northern Border Pipeline Co., 48354
Northern Natural Gas Co., 48354–48355
PG&E Gas Transmission, Northwest Corp., 48355–48356
Questar Pipeline Co., 48356
Tennessee Gas Pipeline Co., 48356–48357
TransColorado Gas Transmission Co., 48357

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Yellowstone County, MT, 48441–48442

Federal Maritime Commission
NOTICES
Agreements filed, etc., 48391–48392
Ocean transportation intermediary licenses:
Worldtrans Services, Inc., et al., 48392

Federal Reserve System
RULES
Practice and procedure:
Accountants performing audit services; removal, suspension, and debarment, 48256–48274

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Senior Executive Service:
Performance Review Board; membership, 48442

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Arapho National Wildlife Refuge, CO, 48408–48409

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Glenn/Colusa County, 48335

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See National Institutes of Health
See Refugee Resettlement Office

Homeland Security Department
See Coast Guard

See Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48403

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48406–48408
Grants and cooperative agreements; availability, etc.:
HOPE VI Revitalization Program, 48515–48527

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

Internal Revenue Service
PROPOSED RULES
Income taxes:
At-risk limitations; interest other than that of a creditor Correction, 48331
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48443

International Trade Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48336–48337
Antidumping:
Bulk aspirin from—
China, 48337–48338
Fresh Atlantic salmon from—
Chile, 48339–48340
Freshwater crawfish tail meat from—
China, 48340
Export trade certificates of review, 48342–48343
Applications, hearings, determinations, etc.:
Medical College of Georgia et al., 48340–48341
North Carolina State University, 48341
Villanova University et al., 48341–48342

Justice Department
NOTICES
Pollution control; consent judgments:
Acorn Engineering Co., et al., 48411
Motiva Enterprises LLC, 48411–48412
Southern Ohio Coal Co., 48412
Western States Contracting, Inc., 48412–48413

Labor Department
See Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48413–48414

Land Management Bureau
NOTICES
Meetings:
National Historic Oregon Trail Interpretive Center Advisory Board, 48409

Library of Congress
See Copyright Office, Library of Congress

National Archives and Records Administration
NOTICES
Meetings:
Presidential Libraries Advisory Committee, 48417

National Institute of Standards and Technology
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48343

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Stem cells that transform to beating cardiomyocytes; therapeutic uses, 48393–48394
Inventions, Government-owned; availability for licensing, 48394–48397
Meetings:
National Heart, Lung, and Blood Institute, 48397
National Institute of Allergy and Infectious Diseases, 48399–48400
National Institute of Environmental Health Sciences, 48399
National Institute of General Medical Sciences, 48398–48399
National Institute on Alcohol Abuse and Alcoholism, 48398
National Library of Medicine, 48400–48401
Scientific Review Center, 48401–48402
Reports and guidance documents; availability:
Drugs for which pediatric studies are needed; list, 48402

National Nuclear Security Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Los Alamos National Laboratory, NM; groundwater monitoring wells, 48358–48359

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 48409–48411

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 48417–48418

Navy Department
NOTICES
Meetings:
Naval Postgraduate School Board of Advisors to Superintendent, 48346

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Aventis Pasteur, Inc., 48418
Meetings; Sunshine Act, 48418

Patent and Trademark Office
RULES
Practice and procedure:
Patent and trademark cases; filing correspondence, requesting copies of documents, payment of fees, and general information, 48286–48293

Postal Rate Commission
RULES
Practice and procedure:
Rates and fees changes and mail classification schedule changes or establishment; additional filing requirements, 48293–48299

Presidential Documents
EXECUTIVE ORDERS
Turkmenistan; waiver under Trade Act of 1974 (EO 13314), 48249

Public Debt Bureau
See Fiscal Service

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Tehama and Shasta Counties, CA; Battle Creek Salmon and Steelhead Restoration Project, 48411

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Recently arrived refugees; support services, 48402–48403

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48419–48421
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 48421–48429
National Securities Clearing Corp., 48429–48431
New York Stock Exchange, Inc., 48431–48436
Stock Clearing Corp. of Philadelphia, 48436–48438

Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Deputy Commissioner Office, Finance, Assessment and Management, 48438

State Department
NOTICES
Art objects; importation for exhibition:
Drawings of Francois Boucher, 48438
Meetings:
Historical Diplomatic Documentation Advisory Committee, 48438–48439

Surface Transportation Board
PROPOSED RULES
Rail licensing procedures:
Class II and III railroads; expedited abandonment procedures exemption, 48332–48333

Thrift Supervision Office
RULES
Practice and procedure:
Accountants performing audit services; removal, suspension, and debarment, 48256–48274

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48439

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Comptroller of the Currency
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
RULES
Terrorism Risk Insurance Program, 48280–48282

Separate Parts In This Issue

Part II
Federal Communications Commission, 48445–48469

Part III
Environmental Protection Agency, 48471–48513

Part IV
Housing and Urban Development Department, 48515–48527

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13314.....48249

7 CFR

916.....48251
917.....48251

Proposed Rules:

91.....48322
96.....48322

12 CFR

19.....48256
263.....48256
308.....48256
513.....48256

14 CFR

39.....48274
97 (2 documents) 48276, 48277

Proposed Rules:

39.....48326

19 CFR

4.....48279

Proposed Rules:

103.....48327

26 CFR

Proposed Rules:

1.....48331

31 CFR

50.....48280

33 CFR

165 (2 documents) 48282, 48284

37 CFR

1.....48286
2.....48286

39 CFR

3001.....48293

40 CFR

180 (3 documents) 48299, 48302, 48312
300.....48314

Proposed Rules:

300.....48331
432.....48472

47 CFR

1.....48446

49 CFR

Proposed Rules:

1152.....48332

Federal Register
Vol. 68, No. 156
Wednesday, August 13, 2003

Presidential Documents

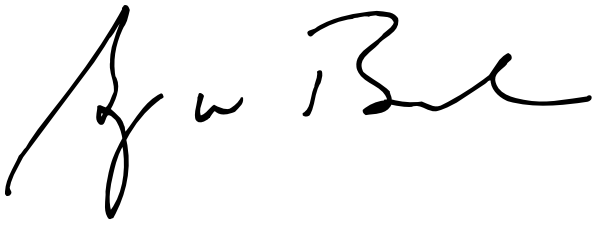
Title 3—

The President

Executive Order 13314 of August 8, 2003

Waiver Under the Trade Act of 1974 With Respect to Turkmenistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 402(c)(2) and (d) of the Trade Act of 1974, as amended (the ''Act'') (19 U.S.C. 2432(c)(2) and (d)), and having made the report to the Congress set forth in subsection 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of the Act with respect to Turkmenistan.



THE WHITE HOUSE,
August 8, 2003.

[FR Doc. 03–20764
Filed 8–12–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 156
Wednesday, August 13, 2003

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–2 IFR–A]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that revised the handling requirements for California nectarines and peaches beginning with 2003 season shipments. This amended rule revises the minimum net weight for five down Euro containers, exempts Peento type peaches from all weight-count standards applicable to round varieties, and clarifies the provisions on the use of variety names. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This amended rule would enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

DATES: Effective August 14, 2003. Comments received by September 12, 2003 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, 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 at 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: Terry Vawter, 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 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 Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are 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. 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. 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.

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis.

This rule amends an interim final rule published in the **Federal Register** on April 9, 2003 (68 FR 17257). That rule, which was based on a unanimous recommendation from the committees made at meetings on December 3, 2002, changed the handling requirements under the orders by establishing a 31-pound minimum net weight for all five down Euro containers used by the industry, among other changes.

This amended interim final rule is based upon recommendations from the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) at meetings on May 1, 2003. The vote on the recommendation by the NAC was 7 to 1 and the vote on the recommendation by the PCC was unanimous. This amended interim final rule also incorporates changes requested on May 27, 2003, by a commenter on the previous interim final rule.

This amended rule revises the net weight for five down Euro containers as recommended by the NAC and PCC. In response to the comment received, this rule also exempts Peento type peaches from all round peach weight-count standards. In addition, this rule clarifies the provisions regarding how packages or containers must be marked with the name of the variety if known, and ''unknown variety'' when the variety is not known. This clarification is based on recommendations of the NAC and

PCC, although their recommendations that the term ''variety'' be defined is not adopted because this change should be implemented following notice and comment rule making procedures.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings, such as the May 1, 2003 meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees recommended that a revised minimum net weight be established for all ''five down'' boxes (commonly referred to as ''Euro'' boxes) that are volume-filled. Currently, the minimum net weight requirement for ''five down'' boxes is 31 pounds, as established by the prior interim final rule. The committees have now recommended that the minimum net weight for five down containers be revised to include a 29-pound net weight for five down containers for the 2003 season only.

''Five down'' boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and ''footprints'' may result in nine boxes per layer, etc.

The committees met on May 1, 2003 and recommended that the current net weights for five down Euro containers be revised to include both a 29-pound box and a 31-pound box. The 29-pound box will be permitted for the 2003 season only, after which time the Grade and Size Subcommittee will review the results from the season and make a recommendation to establish either a 29-pound box or a 31-pound box or other appropriate weight.

Containers used in the nectarine and peach industry have largely resulted from retailer demands. Many retailers want all of their suppliers to provide them with commodities in containers of the same footprint (length and width dimensions), thereby creating consistency and ease of transportation, storage, *etc.,* for the retailer. Euro containers meet those demands, but require the industry to make changes in pack styles and package weights to conform to the evolving demands of the retail sector.

This recommendation resulted from a request by a handler who wanted to respond to a demand from one of his larger retail customers. The customer wanted volume-filled containers of nectarines and peaches of the same weight as tray-packed containers, which currently weigh 29 pounds.

At the meeting, the handler advised the committees that the current minimum net weight of 31 pounds for volume-filled Euro containers is not flexible enough to afford him the opportunity to meet the demands of his buyer.

Nectarines: For the reasons stated above, paragraph (a)(8) of § 916.350 is revised to include a 29-pound net weight for all volume-filled, five down Euro containers of nectarines, in addition to the current 31 pounds. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committees will recommend either a 29-pound, 31-pound container, or other appropriate weight. The container markings shall be placed on one outside end of the container in plain sight and in plain letters.

Peaches: For the reasons stated above, paragraph (a)(9) of § 917.442 is revised to include a 29-pound net weight for all volume-filled, five down Euro containers of peaches, in addition to the current 31 pounds. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committees will recommend either a 29-pound, 31-pound container, or other appropriate weight. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as TABLES 1, 2, and 3 of paragraph (a)(5)(iv).

According to the PCC, the Peento type peaches were initially packed in trays because they were marketed as a premium variety, whose value justified the added packing costs. However, as the volume has increased, the value of this peach has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento type peaches to volume-filled containers.

Prior to the 2002 season, weight-count standards established for peaches and nectarines were developed solely for round fruit. Peento type peaches are shaped like donuts, and weight-count standards for round fruit were inappropriate. In an effort to standardize the conversion from tray-packed containers to volume-filled containers for Peento type peaches, the committee staff conducted weigh-count surveys to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result of those surveys, a new weight-count table applicable to only the Peento type peaches was added for the 2002 season and amended for the 2003 season. The new weight-count tables accommodate very large Peento type peaches that were not previously converted from tray-packs to volume-filled containers, but were being packed in volume-filled containers and required weight-count standards specifically for those sizes.

However, Peento peaches, which are subject to weight-count standards in TABLE 3 of paragraph (a)(5)(iv) in § 917.442, were not exempted from weight-count standards in the non-listed variety size requirements specified in paragraphs (b)(3) and (c)(3) of § 917.459, according to the commenter. This was an inadvertent omission in the previous interim final rule and requires this conforming change in this amended interim final rule. Therefore, the words ''except for Peento type peaches'' will be added at the end of paragraphs (b)(3) and (c)(3) of § 917.459.

Variety Nomenclature

In §§ 916.350 and 917.442 of the orders' rules and regulations, specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of fruit, and lists of standard containers are provided.

In §§ 916.356 and 917.459 of the orders' rules and regulations, specifications of grade, maturity, and size regulations for nectarines and peaches, respectively, are provided for

each variety by the variety's name. These variety-specific requirements are applied based upon the name of the variety, the size each variety is known to attain, the appropriate maturity guide (*e.g.*, color chip) for the variety, and the historic harvest period specific to each named variety.

In §§ 916.60 and 917.50, handlers are required to report on shipments of nectarines and peaches. Sections 916.160 and 917.178 of the orders' rules and regulations specify the types of reports that handlers must file with the committees. Among the requirements, handlers must report the total shipments of nectarines and peaches by variety by November 15 of each year.

Thus, ensuring that each variety is regulated and reported on using the appropriate name is important to the operation of the nectarine and peach marketing orders.

Some handlers are using trademark names in place of the variety name. Thus, inspection service may not be able to provide appropriate inspection for a variety with an unfamiliar name. Accordingly, paragraphs (a)(2) of §§ 916.350 and 917.442 are amended by adding that a marketing name, trademark or brand name may be associated with the variety name, but cannot be substituted for a variety name.

This amended rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits each season meet the handling requirements established under each of these orders. This amended rule will also help the California nectarine and peach industries continue to provide fruit desired by consumers. This amended rule is designed to establish and maintain orderly marketing conditions for these fruit in the interests of producers, handlers, and consumers.

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 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2002 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' estimated the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of $4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 45,354,000 containers, the value of the 2002 packout level is estimated to be $181,416,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about $101,000 from the sales of peaches and nectarines.

This rule amends a prior interim final rule that changed the handling requirements under the orders. The prior interim final rule was published in the **Federal Register** on April 9, 2003 (68 FR 17257). That rule modified §§ 916.115, 916.350, 916.356, 917.150, 917.442, and 917.459, which regulate handling of nectarines and peaches, respectively, under the orders.

In addition, this interim final rule revises the net weight for five down Euro containers, exempts Peento type peaches from all round variety weight-count standards, and clarifies provisions relating to the use of variety names.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on May 1, 2003, and recommended that these handling requirements be revised for the 2003 season. These recommendations had been presented to the committees by the Stone Fruit Grade and Size Subcommittee, which is charged with review and discussion of such changes.

The Stone Fruit Grade and Size Subcommittee discussed the 31-pound net weight requirement for volume-filled five down Euro containers at its meeting on April 8, 2003. At that time, one handler advised that the current net weight of 31 pounds is not flexible enough to afford him the opportunity to meet the demands of his buyers. The handler noted that one large customer has begun demanding volume-filled boxes of nectarines and peaches in a 29-pound box rather than a 31-pound box, which makes the volume-filled container weight consistent with the tray-packed container weight. The handler added that he was unable to provide what his customer wanted, given that the current requirements limit him to a box with a 31-pound minimum weight. In the absence of change, the handler would be forced to ship 31 pounds to the customer, and risk receiving payment for only the 29 pounds the customer wanted.

The subcommittee agreed that the 31-pound box did not provide enough flexibility for all handlers and unanimously recommended that the minimum 31-pound requirement for volume-filled containers be revised. The alternative would have meant that this handler at least would have been unable to meet the demands of a buyer without pricing considerations. In an effort to enhance each handler's ability to provide what the market demands, such an alternative was unacceptable.

The NAC and PCC discussed the subcommittee's recommendation at their meeting on May 1, 2003. They debated the value of simply making 29 pounds the sole minimum net weight for volume-filled Euro containers, but opted to maintain the 31-pound container and add the 29-pound container for the 2003 season, contingent upon review at the end of the season by the Grade and Size Subcommittee. At that time, the subcommittee is expected to recommend only one net weight for five down, volume-filled Euro containers of nectarines and peaches for the 2004 season.

The NAC voted 7 in favor and one opposed to this recommendation, while the PCC voted unanimously in favor of the recommendation. The NAC member opposed to the recommendation noted that additional box styles are costly to the industry and should be avoided, if possible. However, the large majority of committee members disagreed, opting instead to take steps to be responsive to buyers.

Weight-counts for Peento Type Peaches

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When Peento type peach varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of other varieties of peaches. Currently, Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches.

However, due to an inadvertent omission, Peento type peaches were not exempted from the weight-count standards for round peaches in the non-listed (blanket) variety sizes in paragraph (b)(3) and (c)(3) of § 917.459, as noted by the commenter. Thus, under the rules and regulations in the orders, varieties of Peento type peaches that are not regulated by name would be regulated by date of harvest in the blanket regulations. To correct that omission, the words ''except Peento type peaches'' will be added to the end of each of those paragraphs, in response to the concerns of the commenter.

The alternative to this conforming change would be to have Peento type peaches in non-listed variety sizes subject to the same weight-count standards assigned to round varieties, treating these Peento type peaches differently than other varieties of Peento type peaches. Clearly, that is not an acceptable alternative, given that these donut-shaped peaches cannot meet the requirements established for round peaches, and require their own weight-count standards.

The Grade and Size Subcommittee also discussed the issue of variety nomenclature at its meeting on April 8, 2003. Several members expressed concern that use of different marketing names by different handlers for the same variety was causing mismarking situations, which affect inspections, size and maturity assignments, and data collection. The current regulations require that containers bear the name of the variety. This is clarified by adding that trademarks, marketing names, and brand names may be associated with the variety name, but cannot be substituted for the variety name. This is expected to foster consistent variety identification within the industries, and uniform application of maturity and size requirements.

The committees voted unanimously to define ''variety'' as part of the orders' rules and regulations and to specify more detailed identification requirements. A commenter also recommended changes to the names of several peach varieties to bring them into conformity with the recommendations of the PCC. However, because these recommendations limit how handlers must identify the variety names, USDA plans to issue a proposed rule on these recommendations. USDA recognizes that there may be a need for consistency in naming the various peach and nectarine varieties to prevent misleading variety markings, but believes that notice and comment rulemaking, rather than an interim final rule, should be used for implementing such changes.

The committees make recommendations regarding all the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Stone Fruit Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Stone Fruit Grade and Size Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry.

Each of the recommended handling requirement changes for the 2003 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large 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. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee

deliberations on all issues. Like all committee meetings, the May 1, 2003, meetings were public meetings, and entities of all sizes were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at a subcommittee meeting held on April 8, 2003. Finally, 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 the following Web site: *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.

As stated previously, an interim final rule regarding changes to the handling requirements for nectarines and peaches grown in California was published in the **Federal Register** on April 9, 2003 (68 FR 17257). A 60-day comment period was provided to allow interested persons to respond to the rule. Committee staff provided copies of the rule to all committee members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. One comment was received, as noted, and has been addressed herein.

This amended interim final rule invites further comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

Thirty days are provided for interested persons to submit comments. A period of 30 days is deemed appropriate because 2003 crop shipments are now being made and the changes made by interim final rule and this amended interim final rule should be finalized by the end of the shipping season. The nectarine shipping season ends at the end of October, and the peach season ends in late November.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this amended interim final 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, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since shipments of these fruits have already begun; (2) the committees recommended these changes at public meetings and interested persons had opportunities to provide input at these meetings; (3) these changes are relaxations; and (4) the rule provides a 30-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 916.350 is amended by:

■ A. Revising paragraph (a)(2), and

■ B. Revising paragraph (a)(8) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the word ''nectarines'' and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known, or, when the variety name is not known, the words ''unknown variety.'' A marketing name, trade mark, or brand name may be associated with the variety name, but cannot be substituted for the variety name.

* * * * *

(8) Each five down Euro container of loose-filled nectarines shall bear on one outside end in plain sight and in plain letters the words ''31 pounds net weight,'' except for the 2003 season only, such containers may instead be marked with the words ''29 pounds net weight.''

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.442 is amended by:

■ A. Revising paragraph (a)(2); and

■ B. Revising paragraph (a)(9) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the word ''peaches'' and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known, or, when the variety is not known, the words ''unknown variety.'' A marketing name, trademark, or brand name may be associated with the variety name, but cannot be substituted for the variety name.

* * * * *

(9) Each five down Euro container of loose-filled peaches shall bear on one outside end in plain sight and in plain letters the words ''31 pounds net weight,'' except for the 2003 season only, such containers may instead be marked with the words ''29 pounds net weight.''

* * * * *

■ 4. Section 917.459 is amended by:

■ A. Revising paragraph (b)(3); and

■ B. Revising paragraph (c)(3) to read as follows:

§ 917.459 California peach grade and size regulation.

* * * * *

(b) * * *

(3) Such peaches in any container when packed other than as specified in paragraphs (b)(1) and (b)(2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches, except for Peento type peaches.

* * * * *

(c) * * *

(3) Such peaches in any container when packed other than as specified in paragraphs (c)(1) and (c)(2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches, except for Peento type peaches.

* * * * *

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20688 Filed 8–8–03; 4:36 pm]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 03–19]

RIN 1557–AC10

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1139]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AC57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 513

[No. 2003–33]

RIN 1550–AB53

Removal, Suspension, and Debarment of Accountants From Performing Audit Services

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (each an Agency, and collectively, the Agencies) are jointly publishing final rules pursuant to section 36 of the Federal Deposit Insurance Act (FDIA). Section 36, as implemented by 12 CFR part 363, requires that each insured depository institution with total assets of $500 million or more obtain an audit of its financial statements and an attestation on management's assertions concerning internal controls over financial reporting by an independent public accountant (accountant). The insured depository institution must include the accountant's audit and attestation reports in its annual report.

Section 36 authorizes the Agencies to remove, suspend, or debar accountants from performing the audit services required by section 36 if there is good cause to do so. The final rules establish rules of practice and procedure to implement this authority and reflect the Agencies' increasing concern with the quality of audits and internal controls for financial reporting at insured depository institutions. Although there have been few bank and thrift failures in recent years, the circumstances of the failures that have occurred illustrate the importance of maintaining high quality in the audits of the financial position and attestations of management assessments of insured depository institutions. The final rules enhance the Agencies' ability to address misconduct by accountants who perform annual audit and attestation services.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Richard Shack, Senior Accountant, Office of the Chief Accountant, (202) 874–4911; and Karen Besser, National Bank Examiner, Special Supervision/Fraud, (202) 874–4464.

Board: Richard Ashton, Associate General Counsel, Legal Division, (202) 452–3750; Nina Nichols, Counsel, (202) 452–2961; Arthur Lindo, Project Manager, (202) 452–2695; and Salome Tinker, Senior Financial Analyst, (202) 452–3034, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Richard Bogue, Counsel, Enforcement Unit, (202) 898–3726; Harrison E. Greene, Jr., Senior Policy Analyst, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, (202) 898–8905.

OTS: Christine A. Smith, Project Manager, (202) 906–5740, Supervision Policy; Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 36 of the FDIA (12 U.S.C. 1831m), as implemented by FDIC regulations, requires every large insured depository institution to submit an annual report containing its financial statements and certain management assessments to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor.[1] Section 36 of the FDIA also requires that an independent public accountant audit the insured depository institution's annual financial statements to determine whether those statements are presented fairly in accordance with generally accepted accounting principles (GAAP) and with the accounting objectives, standards, and requirements described in section 37 of the FDIA. Under section 37, the accounting principles applicable to financial statements required to be filed with the Agencies must be uniform and consistent with GAAP.[2] In addition, the accountant must attest to and report on management's assertions concerning internal controls over financial reporting.[3] The institution's annual report also must contain the accountant's audit and attestation reports.[4]

Section 36 of the FDIA gives the Agencies the authority to remove, suspend, or bar an accountant from performing the audit services required under section 36 for good cause.[5] This authority is in addition to the enforcement tools the Agencies have under section 8 of the FDIA, which enable the Agencies to remove or prohibit an institution-affiliated party (IAP), including an accountant, from further participation in the affairs of an insured depository institution for certain types of misconduct.[6] Section 36 authority is also distinct from the Agencies' authority to remove, suspend, or debar from practice before an Agency parties, such as accountants, who represent others.[7]

Section 36 does not define good cause, but authorizes the Agencies to implement section 36 through the joint issuance of rules of practice.[8] A removal, suspension, or debarment under section 36 would limit an accountant's or accounting firm's eligibility to provide audit services to

[1] 12 U.S.C. 1831m, 1831m(j)(2); *see also* 12 CFR part 363 (describing the requirements for independent audits and reporting for all insured depository institutions). The statute gives the FDIC Board of Directors the discretion to establish the threshold asset size at which a section 36 annual report is required. That amount is currently set at $500 million. *See* 12 CFR 363.1(a). While a section 36 audit is not required of financial institutions with less than $500 million in total assets, the Agencies encourage every insured depository institution, regardless of its size or character, to have an annual audit of its financial statements performed by an independent public accountant. *See* 12 CFR 363 App. A (Introduction).

[2] 12 U.S.C. 1831m(d), 1831n.

[3] *Id.* 1831m(c); *see also* 12 CFR part 363 (independent audit and reporting requirements).

[4] 12 U.S.C. 1831m(a)(1) and (2).

[5] *Id.* 1831m(g)(4)(A).

[6] *Id.* 1813(u)(4), 1818(e)(1).

[7] *See* 12 CFR part 19, subpart K; 12 CFR part 263, subpart F; and 12 CFR part 513.

[8] 12 U.S.C. 1831m(g)(4)(B).

insured depository institutions with total assets of $500 million or more. A section 36 action would not restrict the ability of accountants and firms to provide audit services to financial institutions with less than $500 million in total assets, however, or to provide other types of services to all financial institutions.

II. Proposed Rule and Comments Received

On January 8, 2003, the Agencies proposed amending their rules of practice by adding provisions for the removal, suspension, or debarment of accountants or accounting firms from performing the audit services required by section 36 of the FDIA.[9] The proposed rules defined ''good cause'' for such actions and established procedures for removal, suspension, or debarment of accountants. The proposals also contained conforming amendments to the existing practice rules of the OCC, Board, and FDIC.

The Agencies received six comments. One comment was from a major trade association for community banks; another was from four large accounting firms and a major professional association for the accounting industry; a third was from three accounting firms that provide audit services to publicly held and non-publicly held banks in one state; the fourth and fifth comments were from certified public accountants; and the final comment was from a banking, management, and economic consultant. The commenters generally stated their support for the underlying goals of section 36 and the proposal—to bolster the quality of audit services.

One commenter expressed concern about immediate suspensions. The commenter asked how an insured depository institution can meet the deadline for submitting section 36 audits if the institution's accountant is subject to an order of immediate suspension and requested guidance on the Agencies' expectations under these circumstances. Another commenter questioned why the Agencies are pursuing this rulemaking, given the role of the newly constituted Public Company Accounting Oversight Board (PCAOB) as a regulator of accountants. The commenter's more specific concern was with the level of due process associated with immediate and automatic suspensions. A third commenter questioned whether the Agencies have authority to use a negligence standard of any kind, given the higher standards elsewhere in the FDIA for IAPs who are independent contractors. The commenter also questioned the authority of the Agencies to extend sanctions to accounting firms and offices.

In response to the comments, the Agencies have revised the proposal, as discussed in detail below.

III. Final Rule

Below is a more detailed discussion of the issues raised in response to the proposal and the Agencies' responses thereto. Because each Agency is codifying the final rules using different section numbers, this discussion will follow the order of the proposal, using captions instead of section numbers for reference.

Definitions

The proposal defined ''accounting firm,'' ''audit services,'' and ''independent public accountant.'' Under the proposal, ''accounting firm'' means a corporation, proprietorship, partnership, or other business firm providing audit services. ''Audit services'' means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services. ''Independent public accountant'' means any individual who performs or participates in providing audit services.

The Agencies did not receive any comments on the definitions. The final rule adopts the definitions as proposed.

Removal, Suspension, or Debarment

Good Cause for Removal, Suspension, or Debarment. The proposed rules defined ''good cause'' for removal, suspension, or debarment of accountants from providing audit services required by section 36. Under the proposal, the Agencies would have ''good cause'' if the accountant does not possess the requisite qualifications to perform audit services; engages in knowing or reckless conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act) [10] and developed by the PCAOB and the Securities and Exchange Commission (SEC), as such standards and provisions become effective; engages in a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or engages in repeated instances of unreasonable conduct, each resulting in a violation of applicable standards, that indicate a lack of competence to perform annual audit services.

Under the proposal, good cause also included knowingly or recklessly giving false or misleading information to the Agencies with respect to any matter before the Agency; knowingly or recklessly violating any provision of the Federal banking or securities laws or regulations, or any other law, including the Sarbanes-Oxley Act; and removal, suspension, or debarment from practice before any Federal or state agency regulating the banking, insurance, or securities industry on grounds relevant to the provision of audit services, other than those actions that result in automatic removal, suspension, and debarment under the proposed rules.

Conduct giving rise to good cause under the proposed rules does not have to occur in connection with the provision of audit services or in connection with services provided to depository institutions. Any actions or failures to act by an independent public accountant or accounting firm that meet the criteria for good cause set forth in the regulation, whether or not related to the banking industry, could constitute good cause for Agency action.

One commenter expressed a variety of reservations about the good cause standard. The commenter's broadest suggestion was that the Agencies should refer all section 36 actions against accountants to the PCAOB and SEC, given the entities' new roles as regulators of accountants under the Sarbanes-Oxley Act.

This comment does not reflect the jurisdictional differences among the Agencies, PCAOB, and SEC. The Agencies have enforcement jurisdiction that is separate and distinct from the PCAOB's and the SEC's enforcement jurisdictions. Congress gave the Agencies discretion to suspend or debar accountants from performing annual audit services for good cause under section 36 of the FDIA. While an

[9] 68 FR 1116 (January 8, 2003); *see also* 68 FR 4967, 5075 (January 31, 2003) (technical corrections).

[10] Pub. L. 107–204, 116 Stat 745 (2002). For further guidance on the obligations of insured depository institutions under the Sarbanes-Oxley Act, *see* OCC Bulletin No. 2003–21, Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations (containing the Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations by the Board, OCC, and OTS (May 6, 2003)); Federal Reserve Board SR Letter 03–8, Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations (May 5, 2003). *See also* FDIC Financial Institution Letter 17–2003 (Corporate Governance, Audits, and Reporting Requirements) (March 5, 2003).

enforcement action by the PCAOB or the SEC could provide good cause for section 36 actions, neither the PCAOB nor the SEC has statutory authority under the FDIA to suspend or debar an accountant from performing annual audit services. Even if the PCAOB or the SEC could accomplish this outcome indirectly, by barring an accountant from associating with an accounting firm, neither the PCAOB nor the SEC has authority to take action against an accountant who performs services for an institution that is not publicly held. Accordingly, the Agencies are not adopting the commenter's suggestion that all section 36 cases be referred to the PCAOB or the SEC.

The commenter further asserted that there might be potential inconsistencies between the good cause standards in the proposed rules and those the PCAOB may establish in the future. To address these potential problems, the commenter suggested that the Agencies should, as stated above, defer to the PCAOB and the SEC, or at a minimum coordinate with them before taking suspension or debarment actions against accountants.

The Agencies intend to coordinate with the PCAOB and the SEC in section 36 cases under appropriate circumstances. However, the Agencies do not believe that the proposed rule creates a conflict in professional or substantive standards for accountants among the Agencies, the PCAOB, and the SEC. The proposed rule did not suggest new standards for accountants. Rather, it incorporated accountants' existing responsibility to adhere to applicable professional standards, such as generally accepted auditing standards and generally accepted standards for attestation engagements, and existing SEC and Agency standards, into the definition of good cause. The proposed rules were also consistent with the Sarbanes-Oxley Act and anticipated future actions by the SEC and PCAOB to enforce standards set by those agencies. The proposed rules were also drafted to accommodate the new standards that will be adopted by the SEC and the PCAOB.

The commenter's next point concerned the possibility that conduct at non-depository institutions could provide the basis for an action against an accountant. The commenter questioned whether the Agencies have the capability to evaluate the relevance of suspensions and debarments of accountants in non-banking contexts, *e.g.*, suspensions or debarments by regulators of different types of businesses. The commenter opposed using suspensions by non-banking agencies to serve as good cause for suspensions or debarments in the banking industry.

The proposal was consistent with the Agencies' current authority under section 8(e)(1)(A)(ii) of the FDIA, which allows the Agencies to take into account unsafe business practices in connection not only with any insured depository institution, but more broadly, *any business institution.*[11] The Agencies continue to believe that there may be cases in which misconduct by accountants at non-depository institutions could raise serious questions about the ability of the accountant to provide audit services for an insured depository institution. Under the final rule, therefore, the Agencies can consider as ''good cause'' suspensions and debarments of accountants in non-depository institution contexts that come to the attention of the Agencies.

Another commenter questioned whether the Agencies have the authority to use negligence as a basis for a removal, suspension, or debarment of an accountant. The commenter argued that the negligence standard is not consistent with remedies available now to the Agencies against independent contractor IAPs under section 8 of the FDIA.[12]

In response, the Agencies note that section 36 of the FDIA broadly refers to ''good cause'' as grounds for section 36 enforcement actions. There is no limitation in the statute on the use of negligence as a basis for action, nor does section 36 tie ''good cause'' to existing section 8 standards. On the contrary, section 36 of the FDIA states that the good cause enforcement remedies are *in addition* to those available under section 8.[13] The commenter's position would essentially require this clause to be eliminated from section 36 of the statute. Also, the negligence standard is one the SEC has used for many years in its suspension and debarment actions against accountants. Congress recently codified this standard for the SEC in the Sarbanes-Oxley Act.

For the foregoing reasons, the Agencies are adopting in the final rules the good cause standard from the proposed rules.

Removal, Suspension, or Debarment of Accounting Firms or Offices of Firms. The proposed rules provided that if an Agency determines that there is good cause for the removal, suspension, or debarment of a member or an employee of an accounting firm, the Agency ''also may remove, suspend, or debar such firm or one or more offices of such firm.'' The proposed rule listed five illustrative factors that the Agency may consider when deciding (a) whether to remove, suspend, or debar a firm or one or more offices of such firm, and (b) the term of any sanction imposed.

Some of the commenters questioned the authority of the Agencies to take action against accounting firms or offices of firms. One commenter noted that section 36(g)(4) of the FDIA specifically permits removal, suspension, or debarment of ''an independent public accountant.'' The commenter then asserted ''[t]here is no mention in the statute of the possible extension of those sanctions to accounting firms or offices, or of extended or vicarious liability in any other way or of any kind.'' The commenter concluded that the Agencies lack authority to implement this aspect of their proposal.

Another commenter did not specifically question the authority of the Agencies to propose rules permitting the removal, suspension, or debarment of an accounting firm or office thereof. Rather, the commenter quoted a portion of the legislative history of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (1989), to the effect that enforcement actions should usually be limited to the individuals who participated in the wrongful action to ''prevent unintended consequences or economic harm to innocent third parties.'' [14] The commenter argued that the rules should include an explicit presumption against taking action against an entire firm, that this sanction should only be available in the most egregious circumstances, specifically articulated in the rules, and that a sanction against a firm should only be permissible after the affected firm has had the opportunity for a meaningful hearing before an independent trier of fact.

The Agencies believe that the proposed rules, as they pertain to actions against accounting firms and offices, are well within the Agencies' statutory authority. As noted in the preamble to the proposed rule, under the current practice regulations, the Agencies may ''remove, suspend, or debar a firm by naming each member of the firm or office in the order * * *.'' Thus, the proposal also employed this scope and provided guidance on when a firm sanction might be appropriate. In

[11] 12 U.S.C. 1818(e)(1)(A)(ii); *see also Hendrickson* v. *FDIC*, 113 F.3d 98 (7th Cir. 1997).

[12] *See* 12 U.S.C. 1818, 1813(u)(4).

[13] *Id.* 1831m(g)(4).

[14] H.R. Rep. No. 54(I), 101st Cong., 1st Sess., at 467 (1989), *reprinted in* 1989 U.S.C.C.A.N. 86,263.

addition, there is no indication that in using the term ''independent public accountant'' Congress intended to restrict removals, suspensions, or debarments solely to natural persons. The term ''independent public accountant'' is used throughout section 36 and its implementing regulation, 12 CFR part 363, not just in the section 36(g)(4) provision relating to removal, suspension, or debarment. Indeed, section 36 specifically provides that all required audit services must be performed by an ''independent public accountant'' who has agreed to provide requested work papers and has received an acceptable peer review. All required audit and other reports are universally signed by accounting firms, not individual accountants,[15] and peer reviews are performed at the firm level. Thus, the Agencies believe that enforcement action at the firm level in appropriate circumstances is entirely consistent with the section 36 statutory scheme.[16]

With respect to the legislative history quoted by the commenter, we note that the history is from FIRREA, not the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[17] which added section 36 to the FDIA, so it is not directly relevant to our construction of section 36. Even if this legislative history were applicable to section 36, the commenter quoted only a portion of the relevant legislative history material—the section not quoted supports the view that, in extending Agency enforcement jurisdiction to independent contractors, including ''any attorney, appraiser, or accountant,'' [18] Congress intended such enforcement jurisdiction to extend to business organizations under appropriate circumstances. In this regard, the House Banking Committee's Report on FIRREA, H.R. Rep. No. 54(I), at 466–67, states:

> [T]he Committee strongly believes that the agencies should have the power to proceed against such entities (corporation, firm or partnership) if most or many of the managing partners or senior officers of the entity have participated in some way in the egregious misconduct. For example, a removal and prohibition order might be justified against the local office of a national accounting firm if it could be shown that a majority of the managing partners or senior supervisory staff participated directly or indirectly in the serious misconduct to an extent sufficient to give rise to an order. Such an order might well be inappropriate if it was taken against the entire national firm or other geographic units of the firm, unless the headquarters of these units were shown to have also participated, even if only in a reviewing capacity.

Accordingly, the similar reference in section 36 to ''independent public accountant'' can reasonably be read to reach firms as well.

The Agencies understand that severe economic consequences may result from action barring an accounting firm from performing section 36 audit services. The Agencies are also sensitive to the consequences that barring a firm might have on innocent third parties not directly involved in the misconduct at issue. While the Agencies have had the authority since FIRREA to pursue enforcement actions against entire firms of professionals, such authority has been used only a handful of times and only in the most egregious circumstances. In addition, the Agencies believe that the five factors specified in the proposed rule appropriately focus the inquiry on whether sufficient involvement of firm management is present to justify action against the entire firm. Accordingly, the Agencies see no reason to amend the proposal to include an explicit presumption against action at the firm or office level. The comment concerning the need for a prior hearing before action at the firm or office level will be addressed in the sections discussing automatic and immediate suspensions.

Proceedings to Remove, Suspend, or Debar. Under the proposed rules, the Agencies would hold formal hearings on removals, suspensions, and debarments under rules that are consistent with the Agencies' Uniform Rules of Practice and Procedure (Uniform Rules).[19] The Uniform Rules provide, among other things, for written notice to the respondent of the intended Agency action and the opportunity for a public hearing before an administrative law judge. The administrative law judge would refer a recommended decision to the Agency, which would issue a final decision and order. Each Agency would have the discretion to limit an order of removal, suspension, or debarment so that it applied solely to audit services provided to specified insured depository institutions, rather than to all insured depository institutions supervised by the issuing Agency. This was referred to in the proposed rules as a ''limited scope order.'' [20]

The procedures in the proposed rules for removal, suspension, and debarment were drawn principally from the Agencies' existing practice rules. The Agencies did not receive comment on these procedures. Therefore, the Agencies are adopting the procedures as proposed.

Immediate Suspension from Performing Audit Services. The proposed rule implemented the authority in section 36 to ''suspend'' an independent public accountant by providing that an Agency may issue a notice immediately suspending an accountant or a firm subject to a notice of intention to remove, suspend, or debar if the Agency determines that immediate suspension is necessary for the protection of an insured depository institution, or its depositors, or for the protection of the insured depository system as a whole. In making this proposal, the Agencies stated that the authority to immediately suspend an accountant or firm could prevent seriously harmful conduct relating to accounting matters at an insured depository institution from being repeated or escalating while the administrative proceedings relating to a permanent removal, suspension, or debarment order are pending.

One commenter asked for guidance to insured depository institutions on what to do if their accountant were suspended immediately, more specifically, how to meet the deadlines for filing annual audits. The commenter was concerned that there would not be sufficient time to complete the audit, given the time it would take for a new accountant to become familiar with the facts.

The Agencies understand that an immediate suspension may cause disruption to an institution and make it

[15] Section AU 508.08 of the AICPA's Professional Standards describes the basic elements of the auditor's standard report on audited financial statements. These elements include ''i. The manual or printed signature of the auditor's firm.'' Similarly, Section AT 501.47 of these standards states that a practitioner's examination report on the effectiveness of an entity's internal control over financial reporting should include ''j. The manual or printed signature of the practitioner's firm.'' In addition, Section AU 9339.06 of the Professional Standards presents an example of a letter that an auditor should consider submitting to a regulator prior to allowing the regulator access to audit work papers. This letter ends with ''Firm signature.''

[16] The Agencies realize that the final rule includes definitions of both independent public accountant (individuals who provide audit services) and accounting firm (business entities that provide auditing services). The dual definitions are required because of the additional criteria, beyond those applicable to individual accountants, that the Agencies may assess in determining whether to take action against a firm. The Agencies continue to believe that the statutory term independent public accountant encompasses both regulatory definitions.

[17] Pub. L. 102–242, 105 Stat. 2236 (1991).

[18] 12 U.S.C. 1813(u)(4).

[19] *See* 12 CFR part 19, subpart A (OCC); 12 CFR part 263, subpart A (Board); 12 CFR part 308, subpart A (FDIC); 12 CFR part 509, subpart A (OTS).

[20] The Agencies will also have the discretion to issue suspension orders where the duration of the suspension would be dependent on the satisfactory completion of remedial action.

difficult to meet the deadlines for submitting annual audits. The Agencies expect that immediate suspensions would only be issued in compelling situations. In the case where an Agency head imposed an immediate suspension, the Agency will make appropriate adjustments to the filing deadlines, if warranted, at the institution's request.

Another commenter expressed a variety of objections to the proposed procedures for contesting an immediate suspension. The commenter generally stated that the proposed procedures do not comport with due process and suggested that the Agencies modify the proposed procedures in a number of areas to follow more closely those procedures governing issuance of temporary cease-and-desist orders by the SEC. Except for the modifications explained below, the Agencies do not believe that the proposed procedures should be conformed to the procedures applicable to temporary cease-and-desist orders issued under the securities laws. With regard to the protection of the nation's banking system, judicial decisions have recognized that there is a compelling governmental interest that can justify regulatory action with abbreviated procedures when necessary.[21] The Agencies expect that the immediate suspension remedy would be used only in circumstances where serious harm to a depository institution, its depositors, or to the depository system as a whole would occur unless immediate enforcement action is taken.

The commenter also had more specific suggestions for revisions to the proposal. First, the commenter stated that the Agencies' proposed procedures should allow for a quicker agency decisionmaking process. The commenter noted that, under the time frames contained in the proposed rules, an accountant or a firm that petitions the Agency to stay a notice of immediate suspension may not receive a decision with respect to the petition until 70 days after the immediate suspension becomes effective. The commenter noted that, under the SEC Rules of Practice, a final agency decision on a challenge to a temporary cease-and-desist order issued by the SEC without a prior hearing is required within 20 days.[22]

The Agencies believe that the proposed maximum time period permitted for an Agency decision on a stay petition is consistent with due process requirements. The Agencies note that the Supreme Court has approved a procedural framework allowing up to 90 days for a final decision by the Agencies on a challenge to an *ex parte* suspension order issued by the Agencies against an IAP of a depository institution who has been indicted for certain types of crimes. *FDIC* v. *Mallen*, 486 U.S. 230 (1988).

The maximum time limits in the proposed rules were designed by the Agencies to permit a sufficient period for the creation of a meaningful record with regard to a stay petition and for careful and deliberate review of that record by the Agency decision maker, consistent with the recognized necessity for prompt administrative action on such a petition. As with the post-deprivation Agency hearing at issue in the *Mallen* decision, a stay petition could necessitate resolution of factual disputes that would require at least some examination of relevant evidence.

The Agencies intend that an administrative decision on a stay petition under the rules should be made at the earliest practicable time. Thus, the time limits imposed in the rules are intended to establish only the maximum period allowable for issuing a decision and a decision is expected to be made more promptly whenever feasible. Nevertheless, in order to further minimize concerns about undue delay in the decision on a stay petition, the Agencies believe that the date by which a hearing on a petition to stay is ordered can be shortened without unduly impairing the administrative decisionmaking process. Accordingly, the final rules require that an Agency must order a hearing on a petition to stay to be held 10 days after receipt of the petition, rather than within 30 days as proposed.

As the commenter pointed out, the Supreme Court's approval of a 90-day agency decisionmaking period in the *Mallen* decision depended in part on the fact that, under the statutory framework at issue, the suspension of an IAP may be issued only after the individual involved has been indicted by an independent entity, like a grand jury. According to the Court, the indictment serves to reduce the likelihood that the banking agency suspension is unjustified. Under the proposed rules, an immediate suspension notice may be issued by an Agency without any similar action by a third party. In the Agencies' view, however, the lack of an independent triggering event by a third party for accountant suspensions does not mean that the maximum time limits in the final rules would result in the denial of a prompt and meaningful hearing before the Agency on the propriety of the suspension. The Agencies intend that, under the final rules, an immediate suspension could be issued only where there is probative evidence that substantial harm to an insured depository institution, its depositors, or to the depository system as a whole is likely to occur prior to completion of the proceedings on a permanent order of removal, suspension, or debarment. In addition, under the final rules, the maximum time period permitted for a decision on a stay petition (50 days) is only slightly longer than half the maximum time limit approved in the *Mallen* case for an agency decision on an indictment-triggered suspension. In the Agencies' judgment, the maximum time for decision in the final rules represents the shortest realistic period necessary for adequate consideration of the suspended party's opposition to the suspension.[23] As the Supreme Court noted in *Mallen*, the public has a strong interest in seeing that the ultimate agency decision with respect to a suspension is made in a ''considered and deliberate manner.'' [24]

The commenter's second objection to the procedures was to the proposed provisions under which the decision on a petition to stay an immediate suspension is made by a presiding officer designated by the Agency. According to the commenter, the stay petition should be decided by an administrative law judge, who by statute has some independence from the agency whose cases the judge hears.

The Agencies do not believe that an administrative law judge must be designated as the decisionmaking official with regard to a petition to stay the immediate suspension of an accountant or firm. The Agencies note that under their existing rules of practice, a similar type of decision on an interim order, namely the decision with respect to whether a suspension of an IAP who has been indicted should be lifted pending completion of the criminal trial, is made by a presiding officer, not by an administrative law judge.[25] A court decision that prescribed the minimum procedures required by due process for these suspensions did not suggest that the agency decision on lifting the suspension had to be made by

[21] *See, e.g., Fahey* v. *Mallonee*, 322 U.S. 245 (1947).

[22] 17 CFR 201.513(c).

[23] The proposed and final rules permit a suspended accountant or firm to elect to seek review of the presiding officer's decision on a stay petition by the Agency. However, the appeal to the Agency is not mandatory.

[24] 486 U.S. at 244.

[25] 12 CFR 19.112(b) (OCC); 12 CFR 263.73(a) (Board); 12 CFR 308.164(b) (FDIC); and 12 CFR 508.6(a) (OTS).

an administrative law judge in order to meet constitutional requirements.[26]

The Agencies recognize, however, that it may be useful to clarify that the presiding officer who decides a petition to stay an immediate suspension must be insulated from the Agency staff responsible for prosecuting the charges against the suspended accountant or firm. The provisions of the proposed rules relating to the hearing on a stay petition are therefore being modified to add a new sentence, which follows the requirements of the Administrative Procedure Act [27] for formal agency adjudications. The final rules explicitly state that an Agency employee engaged in investigative or prosecuting functions for the Agency in a particular action against an accountant or a firm, or in a factually related action, may not serve as the presiding officer or otherwise participate or advise in the decision with respect to a petition to stay the immediate suspension.

The commenter's third suggestion was that the proposed immediate suspension provisions be modified to make clear that, except in unusual cases, an accountant or firm should be suspended immediately only after prior notice and opportunity for the party involved to contest the suspension. In the Agencies' judgment, the modification to the proposed procedures advocated by the commenter is neither necessary nor appropriate. There is nothing in section 36 that requires prior notice and opportunity for hearing before a suspension under that provision may be issued. Moreover, the courts have long recognized that the strong governmental interest in protecting depositors and preserving confidence in the financial system can justify immediate action by the regulatory agencies prior to notice and the opportunity for hearing.[28]

Fourth, the commenter asserted that, like the SEC Rules of Practice, the Agencies' procedures should require a showing that irreparable harm would result before authorizing an immediate suspension. Contrary to this comment, there is no requirement in section 36 that the Agencies show ''irreparable harm.'' Nor are the agencies aware of any authority that requires a finding by the Government of irreparable harm in order to satisfy minimum constitutional standards of due process before immediate action can be taken. The Agencies further note that the suspension procedures in the proposed rules and the finding that must be made by the Agencies to justify an immediate suspension are very similar to those prescribed in section 8(e)(3) of the FDIA, which govern the suspension of an IAP of an insured depository institution pending completion of administrative proceedings concerning a proposed permanent order of removal or prohibition.[29] Nevertheless, to better express the immediate suspension standard, the rule has been revised to require ''immediate harm'' to an insured depository institution, its depositors, or to the depository system as a whole.

The commenter's fifth criticism of the proposed rule was that it did not establish a procedure for judicial review of immediate suspensions imposed by the Agencies. However, section 36 contains no specific provision for review by the courts of any action taken by the Agencies under the authority of that provision. Administrative agencies have no authority to create a right to judicial review of agency action.[30] Any right to judicial review of an immediate suspension must be based on some statutory authority.

The commenter's sixth point concerned immediate suspensions of accounting firms. The commenter stated that the Agencies' authority under the proposal to immediately suspend a firm from providing audit services is too broad and subjective and any firm subject to an immediate suspension should have greater procedural protections than what is provided in the proposed rules.

The Agencies recognize that the immediate suspension of an entire firm could have a serious effect on the firm as well as on the insured depository institutions that may be relying on the firm for audit services. However, as explained above, the Agencies intend that the immediate suspension sanction would be applied to a firm only when clearly necessary to protect a depository institution or the depository system and when the factors specified in the rules for applying disciplinary action to a firm support such a regulatory response. Because the Agencies believe that these circumstances, though unusual, warrant disciplinary action against an entire accounting firm should they occur, the Agencies have retained that authority in the final rule. The procedural protections afforded an immediately suspended party in the final rules, whether an individual or a firm, represent an appropriate balance between protecting the banking system and protecting the rights of affected parties.

Automatic Removal, Suspension, and Debarment. The proposed rule provided that accountants or firms subject to certain specified disciplinary actions would automatically be prohibited from providing audit services. No further proceedings or hearings by the Agency would be required in these instances. Under each Agency's proposed rule, the actions giving rise to such an automatic bar include: (1) A final order of removal, suspension, or debarment under section 36 (other than a limited scope order) issued by any of the other Agencies; (2) certain actions by the PCAOB (specifically, a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or debarment from further association with a registered public accounting firm); (3) certain actions by the SEC (specifically, an order of suspension or a denial of the privilege of appearing or practicing before the SEC); and (4) suspension or debarment for cause from practice as an accountant by the licensing authority of any state, possession, commonwealth, or the District of Columbia.

Under the proposed rules, disciplinary actions not giving rise to an automatic bar could still serve as grounds for an Agency to take action against an accountant or a firm. In this respect, grounds for Agency action set forth in the proposal specifically include removal, suspension, or debarment by any Federal or state agency regulating the banking, insurance, or securities industries. If such an action were grounds for an Agency proceeding, however, the full array of hearings and procedures in the proposed rules would be required.

One commenter objected to the proposed rules' approach to the automatic bar, contending that it was too broad in scope because the reasons for an action by the SEC, PCAOB, or a state might be irrelevant to the provision of audit services under the rules. The commenter argued that, to prevent an unwarranted automatic bar, an accountant or a firm should in all cases have the opportunity for a hearing before an Agency considering removal, suspension, or debarment, and that the Agency should be required to conduct an independent analysis. The commenter also asserted that the SEC's automatic suspension provisions are more limited and generally require license revocation, criminal conviction, or prior action by the SEC. Finally, the commenter urged the Agencies to include in the final rule an expedited

[26] *Feinberg* v. *FDIC*, 420 F. Supp. 109, 120 (D.D.C. 1976).

[27] 5 U.S.C. 554.

[28] *See, e.g., Fahey* v. *Mallonee*, 332 U.S. at 253; *Mallen*, 486 U.S. at 240–41; *Feinberg*, 420 F. Supp. at 119.

[29] 12 U.S.C. 1818(e)(3).

[30] Final agency action would, however, be reviewable by a court under the Administrative Procedures Act.

review process for an automatic removal, suspension, or debarment.

The Agencies believe that the automatic bar provisions are generally appropriate, notwithstanding certain differences from the SEC's practice, and that the protections granted in the rule are adequate. In a case where another Agency has taken disciplinary action against an accountant or a firm under section 36, the Agency has resolved issues that are relevant to the provision of audit services throughout the banking system. If an accountant or a firm were entitled to a separate hearing before each Agency, four separate hearings would be required to prevent an accountant or firm from providing audit services under the rules, notwithstanding the similarity of the issues. Such a requirement would essentially result in duplicative proceedings to implement a single action, and the Agencies do not believe that the repetitive proceedings would result in any significant additional protection for the accountant or firm. The Agencies believe it is appropriate and within the statutory direction of section 36 for the joint rules to provide that each Agency will defer to the proceedings of the other federal banking supervisors.

It should be noted that the automatic bar resulting from an action by another Agency does not apply in a case where the other Agency has issued a limited scope order effective only with respect to audit services provided to one or more specified institutions. If another Agency sought to remove, suspend, or debar an accountant subject to a limited scope order, it would have to provide the accountant with the hearings and procedures set forth in the rule. Moreover, in the event that the particular facts and circumstances of a removal, suspension, or debarment justify an exception from the automatic, industry-wide bar, each Agency's proposed rule provided that the Agency has discretion to override the automatic bar with respect to the institutions it supervises. An accountant or firm would be entitled to make such a request in any case, and the Agency could grant written permission.

One commenter suggested that the Agencies should include in the rule substantive standards for when they will override the automatic bar. In response, we note that the general standard for suspension or debarment under section 36—''good cause''—would apply to the decision of whether or not to override an automatic bar. It is impossible to predict all the situations in which the facts will support an override of an automatic suspension or debarment. A bright-line test could have the effect of limiting an Agency's flexibility to give the relief sought by the accountant or firm. Accordingly, the final rule retains the provision permitting the accountant or firm to request that an Agency grant an exception from the automatic bar.

With regard to SEC and PCAOB actions as a predicate for the automatic bar, the Agencies believe that the SEC's and PCAOB's expertise and jurisdiction in this area warrant recognition by the Agencies of their actions against an accountant or firm. While there are differences between insured depository institutions and institutions under the primary jurisdiction of the SEC, the conduct giving rise to suspension or debarment by the SEC is likely to be of equally significant concern to the banking regulators. In the rare case where an action by the SEC or the PCAOB is based on conduct that is unrelated to the provision of audit services to an insured institution, the Agencies retain override authority, and an accountant or firm would be able to request Agency permission to provide audit services notwithstanding SEC or PCAOB action.

The final trigger for an automatic bar in the proposed rule was suspension or debarment for cause by a state licensing authority. The Agencies have further considered the potential effects of this provision in light of the comments received and agree that there are likely to be instances in which a state's action is not relevant to the provision of audit services—there may be a wide range of ''for cause'' grounds for suspension or debarment under various state laws. In addition, the procedural protections afforded to accountants in state proceedings may not be as uniform and as broad as those provided by the Agencies, the SEC, and the PCAOB. Accordingly, the Agencies have determined that suspension or debarment of an accountant for cause by a state licensing authority should properly be treated as grounds for discretionary Agency removal, suspension, or debarment, rather than as a trigger for the automatic prohibition on the provision of audit services. The final rule amends both the automatic bar section and the section on grounds for Agency action to reflect this change.

One commenter raised a concern about whether the automatic bar provision of the proposed rule could violate an accountant's or a firm's right to due process by imposing a penalty without allowing opportunity for a hearing. As set forth above, the automatic bar only applies in instances where the accountant or a firm has already received due process protections in proceedings before another Agency, the SEC, or the PCAOB. Moreover, an accountant or a firm may petition an Agency to perform audit services for a bank or savings association. The Agencies believe that these procedures will provide ample opportunity for an accountant or firm to obtain a fair hearing that comports with due process protections of the Constitution.

Notice of Removal, Suspension, or Debarment. The proposed rules required the Agencies to make public any final order of removal, suspension, or debarment against an accountant or accounting firm and notify the other Agencies of such orders. This was consistent with the presumption in favor of public notice for enforcement actions in the FDIA.[31] The proposed rules also contained notification provisions for accountants and firms.

The proposal required that an accountant or accounting firm performing section 36 audit services for any insured depository institution must provide the Agencies with written notice of any currently effective disciplinary sanction against the accountant or firm issued by the PCAOB under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act, relating to revocation of registration and association with a public accounting firm or issuer; any current suspension or denial of the privilege of appearing or practicing before the SEC; or any suspensions or debarments for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia. Written notice under the proposed rules is also required of any removal, suspension, or debarment from practice before any Federal or state (non-licensing) agency regulating the banking, insurance, or securities industry on grounds relevant to the provision of audit services; and any action by the PCAOB under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act, relating to limitations on the activities of accountants and accounting firms and any other appropriate sanction provided in the rules of the PCAOB. Written notice must be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

The Agencies did not receive any comments on the notice provisions. The Agencies are therefore adopting the

[31] 12 U.S.C. 1818(u)(1).

provisions as proposed, although there are technical changes to accommodate changes to the good cause and automatic suspension provisions described above.

Petition for Reinstatement. Under the proposal, a removed, suspended, or debarred ''independent public accountant or accounting firm'' may request reinstatement by the Agency that issued the order. The individual or firm would be able to request reinstatement at any time more than one year after the effective date of the order and, thereafter, at any time more than one year after the most recent request for reinstatement.

One commenter asked that the Agencies revise the proposal to permit a firm to petition for reinstatement of individual offices that have been removed, suspended or debarred, in addition to permitting petitions for reinstatement of individual accountants or the firm as a whole. The Agencies did not intend in the proposed rule to prohibit offices of a firm that have been removed, suspended, or debarred from petitioning for reinstatement. The proposed reinstatement provision, therefore, has been revised in the final rule to clarify that a removed, suspended, or debarred office of a firm may petition for reinstatement.

Another commenter urged the Agencies to state factors that the Agencies would consider in evaluating a reinstatement request so that affected parties would know what type of information the Agencies need to make a decision. The Agencies understand that petitioners will wish to tailor their reinstatement requests in a manner that they believe will yield them success in obtaining the relief they seek. In the past and in other contexts, the Agencies have looked at various factors in reviewing reinstatement petitions. These factors included: (1) The nature, extent, and duration of the conduct that led to the issuance of the order; (2) the period of time that an order has been outstanding, as well as any prior requests made by the petitioner; (3) activities of the petitioner since the order was issued, including evidence of rehabilitation; (4) the nature of the position or proposed action the requestor is seeking, and the scope of relief sought; (5) the likelihood of future misconduct giving good cause for removing, suspending, or debarring the petitioner; and (6) the views and opinions of other Federal banking agencies, when applicable. The Agencies will include these factors in their evaluations of petitions for reinstatement.

Second, the commenter asserted that the Agencies failed to explain the necessity for a one-year waiting period before a suspended, removed, or debarred party could seek reinstatement. The commenter argued in favor of a case-by-case approach. In addition, the commenter argued that the Agencies' requirement of a one-year period is inconsistent with the SEC's rules, which permit a petitioner to file for reinstatement at any time.

The Agencies believe that the proposed rule made room for a case-by-case approach to reinstatement by providing that, ''unless otherwise ordered'' by the appropriate agency decision maker, the one-year waiting period would apply. Under the proposed rule, if a petitioner believed that the circumstances merited review prior to the expiration of the one-year period, the petitioner could seek an order from the Agency decision maker permitting the petitioner to seek such earlier review. Given the Agencies' intention, as reflected in the proposed rule, that the one-year waiting period for reinstatement have some flexibility and considering the comments received, the Agencies have amended the final rule to permit persons, firms, and offices to petition for reinstatement at any time.

The proposal reflected the view of the Agencies that petitions for reinstatement filed close in time, either to the Agency's decision or the last petition for reinstatement, are unlikely to present new issues or bases for reinstatement and would waste Agency resources. Thus, although the final rule permits a petition for reinstatement at any time, it will be unusual for the Agencies to grant such relief within one year of a removal, suspension or debarment order.[32]

IV. Conforming and Technical Changes to the Rules of the Agencies

OCC

The OCC proposed adding ''recklessness'' to its description of ''disreputable conduct'' that may lead to removal, suspension, or debarment of parties or their representatives who practice or appear before the OCC.[33] This change would conform the OCC's general rules of practice with the standards in the proposal for removal, suspension, or debarment of accountants from performance of section 36-required audit services, which in turn reflects the addition of the recklessness standard to the SEC's rules of practice by the Sarbanes-Oxley Act. The purpose of adding the recklessness standard was to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment.

The OCC also proposed broadening the scope of ''disreputable conduct'' to allow the OCC to consider suspensions or debarments of accountants—for any reason—by the other Agencies, the SEC, the Commodity Futures Trading Commission, or any other Federal agency. This change would remove the requirement in the current § 19.196(g) that suspensions by other agencies concern ''matters relating to the supervisory responsibilities of the OCC.'' This change takes into account the possibility that a suspension of an accountant by another agency, relating to the professional conduct of an accountant, could be grounds for removal, suspension, or debarment by the OCC, even if the suspension by the other agency did not relate to a banking matter.

Unlike the other amendments in the proposal, which would address an accountant's or a firm's ability to perform section 36-required audits, this part of the proposal concerned who may practice before the OCC in other capacities, such as in adjudications, or through preparation of documents for submission to the OCC. Under the proposed rule, the OCC also revised a number of sections within part 19 to make conforming and technical changes to implement section 36 of the FDIA and bring procedural aspects of part 19 up to date.

The OCC did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

Board

The Board proposed to amend its Rules of Practice Before the Board (12 CFR 263, subpart F) to expand the type of conduct for which an individual may be censured, debarred, or suspended from practice before the Board. In particular, the Board proposed to revise the description of the conduct that would warrant sanctions to include reckless violations, or reckless aiding and abetting violations, of specified laws and the reckless provision of false or misleading information, or reckless participation in the provision of false or misleading information, to the Board. The regulation currently provides for sanctions only for willful misconduct. The purpose of this proposed amendment was to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing

[32] Also, in the case of a suspension, it will be unusual for the Agencies to grant reinstatement prior to the expiration of the suspension period.

[33] *See* 12 CFR 19.196 (describing disreputable conduct).

action, may form the basis for a suspension or debarment from practice before the Board. This change also reflected the modification made to the SEC's rules of practice by the Sarbanes-Oxley Act.

The Board did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

FDIC

The FDIC proposed making a clarifying and conforming amendment to 12 CFR 308.109, which deals with the suspension and disbarment of the right of any counsel to appear or practice before the FDIC, to specify that an application for reinstatement must comply with the general filing procedures established by part 303. The amendment would add a new sentence before the current last sentence of section 308.109(b)(3) to read as follows: ''The application shall comply with the requirements of 12 CFR 303.3.''

The FDIC did not receive any comments on these proposed changes. Accordingly, the conforming and technical changes are adopted in the final rule as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the appropriate Federal banking agencies must either provide a Final Regulatory Flexibility Analysis for a final rule or certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis and final regulation, the OCC defines ''small entities'' to be those national banks with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts.

We have reviewed the impact this final rule will have on small banks. Based on that review, we certify that the final rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the requirement for audits does not apply to national banks with less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to national banks. For these reasons, the OCC does not anticipate that the proposal will affect a substantial number of small entities.

Board: Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the Board certifies that the suspension and debarment amendments in this final rulemaking will not have a significant adverse economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis, the Board defines ''small entity'' as (1) any insured state member bank with less than $150 million in total assets, or (2) any bank holding company with a subsidiary insured state member bank with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts. The basis for the Board's certification is that the final rule will not apply to state member banks that have less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to institutions that are regulated by the Federal Reserve.

FDIC: The FDIC certifies, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), that the final suspension and debarment amendments will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the rule will not apply to insured depository institutions that have less than $150 million in total assets. Furthermore, only a limited number of small accounting firms provide section 36 audit services to insured depository institutions for which the FDIC is the appropriate Federal banking agency.

OTS: Under the RFA, OTS must either provide a Final Regulatory Flexibility Analysis, or certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis, the OTS defines ''small banks'' to be those savings associations with less than $150 million in total assets.

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b) certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this rule does not apply to savings associations with less than $500 million in assets.

B. Paperwork Reduction Act

The Agencies have determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

C. Executive Order 12866

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

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties, State nonmember banks.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For reasons set out in the joint preamble, part 19 of chapter I of title 12

of the Code of Federal Regulations is amended to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; and 42 U.S.C. 4012a.

Subpart B—[Amended]

■ 2. Section 19.100 of subpart B is revised to read as follows:

§ 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition (except that in removal and prohibition cases instituted pursuant to 12 U.S.C. 1818, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

Subpart C—[Amended]

■ 3. In § 19.111 of subpart C, the section heading and the fourth and fifth sentences are revised to read as follows:

§ 19.111 Suspension, removal, or prohibition.

* * * The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Deputy Comptroller in the OCC district in which the bank, accountant, or accounting firm in question is located, or, if the bank is supervised by Large Bank Supervision, to the appropriate Deputy Comptroller for Large Bank Supervision for the Office of the Comptroller of the Currency, or if the bank is supervised by Mid-Size/Community Bank Supervision, to the Senior Deputy Comptroller for Mid-Size/Community Bank Supervision for the Office of the Comptroller of the Currency, Washington, DC 20219. The request must state specifically the relief desired and the grounds on which that relief is based.

Subpart K—[Amended]

■ 4. In § 19.196 of subpart K, the introductory text and paragraphs (a), (b), and (g) are revised to read as follows:

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred, or suspended from practice before the OCC includes:

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term ''information'' includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement;

* * * * *

(g) Suspension, debarment or removal from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or state agency; and

* * * * *

■ 5. A new subpart P is added to read as follows:

Subpart P—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.

19.241 Scope.
19.242 Definitions.
19.243 Removal, suspension, or debarment.
19.244 Automatic removal, suspension, or debarment.
19.245 Notice of removal, suspension, or debarment.
19.246 Petition for reinstatement.

§ 19.241 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured national banks, District of Columbia banks, and Federal branches and agencies of foreign banks.

§ 19.242 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

§ 19.243 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment.*

(1) *Individuals.* The Comptroller may remove, suspend, or debar an independent public accountant from performing audit services for insured national banks that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Comptroller finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the OCC or any officer or employee of the OCC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 19.244, on grounds relevant to the provision of audit services; or

(vii) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) *Accounting firms.* If the Comptroller determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Comptroller also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Comptroller may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Comptroller, be made applicable to a particular national bank or class of national banks.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the OCC may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar.*

(1) *Initiation of formal removal, suspension, or debarment proceedings.* The Comptroller may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 19, subpart A).

(c) *Immediate suspension from performing audit services.*

(1) *In general.* If the Comptroller serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Comptroller may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured national banks, if the Comptroller:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Comptroller dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Comptroller to the respondent.

(3) *Petition for stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Office of the Comptroller of the Currency, Washington, DC 20219 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Comptroller will designate a presiding officer who shall fix a place and time (not more than 10 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any OCC employee engaged in investigative or prosecuting functions for the OCC in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the OCC, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 19.6 through 19.12, 19.16, and 19.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the

presiding officer shall promptly certify the entire record to the Comptroller. Within 60 calendar days of the presiding officer's certification, the Comptroller shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Comptroller's decision.

§ 19.244 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for insured national banks if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision under section 36 of the FDIA.

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B)); or

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(b) Upon written request, the Comptroller, for good cause shown, may grant written permission to such accountant or firm to perform audit services for national banks. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

§ 19.245 Notice of removal, suspension or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Comptroller shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Comptroller by accountants and firms.* An accountant or accounting firm that provides audit services to a national bank must provide the Comptroller with written notice of:

(1) Any currently effective order or other action described in §§ 19.243(a)(1)(vi) through (a)(1)(vii) or §§ 19.244(a)(2) through (a)(3); and

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act) (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

§ 19.246 Petition for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Comptroller, a petition for reinstatement by an independent public accountant, an accounting firm, or an office of a firm that was removed, suspended, or debarred under § 19.243 may be made in writing at any time. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Comptroller, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application. The Comptroller may, in his sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Comptroller, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: July 23, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons set out in the joint preamble, part 263, chapter II, title 12 of the Code of Federal Regulations is amended as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 506, 1817(j), 1818, 1828(c), 1831m, 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2, 6801, 6805; and 28 U.S.C. 2461 note.

Subpart F—[Amended]

■ 2. In § 263.94, paragraphs (a) and (b) are revised to read as follows:

§ 263.94 Conduct warranting sanctions.

* * * * *

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term ''information'' includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

* * * * *

■ 3. A new subpart J is added as follows:

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.

263.400 Scope.
263.401 Definitions.
263.402 Removal, suspension, or debarment.
263.403 Automatic removal, suspension, and debarment.
263.404 Notice of removal, suspension, or debarment.
263.405 Petition for reinstatement.

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

§ 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA)(12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks and for bank holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

§ 263.401 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to the holding company of an insured bank that is used to satisfy requirements imposed by section 36 or part 363 on that bank.

(c) *Banking organization* means an insured state member bank or a bank holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank of that holding company.

(d) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

§ 263.402 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment.*

(1) *Individuals.* The Board may remove, suspend, or debar an independent public accountant from performing audit services for banking organizations that are subject to section 36 of the FDIA, if, after notice of and opportunity for hearing in the matter, the Board finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflict of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the Board or any officer or employee of the Board;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 263.403, on grounds relevant to the provision of audit services; or

(vii) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) *Accounting firms.* If the Board determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Board also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Board may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board, be made applicable to a particular banking organization or class of banking organizations.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the Board may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar.*

(1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearing under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 263, subpart A).

(c) *Immediate suspension from performing audit services.* (1) *In general.* If the Board serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for banking organizations, if the Board:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or

debarment issued by the Board to the respondent.

(3) *Petition to stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Secretary will designate a presiding officer who shall fix a place and time (not more than 10 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any Board employee engaged in investigative or prosecuting functions for the Board in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the Board, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 263.6 through 263.12, 263.16, and 263.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer shall promptly certify the entire record to the Board. Within 60 calendar days of the presiding officer's certification, the Board shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Board's decision.

§ 263.403 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for banking organizations if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(A) or (B)); or

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(b) Upon written request, the Board, for good cause shown, may grant written permission to such accountant or firm to perform audit services for banking organizations. The request shall contain a concise statement of the action requested. The Board may require the applicant to submit additional information.

§ 263.404 Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Board shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Board by accountants and firms.* An accountant or accounting firm that provides audit services to a banking organization must provide the Board with written notice of:

(1) Any currently effective order or other action described in §§ 263.402(a)(1)(vi) through (a)(1)(vii) or §§ 263.403(a)(2) through (a)(3); and

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

§ 263.405 Petition for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board, a petition for reinstatement by an independent public accountant, an accounting firm, or an office of a firm that was removed, suspended, or debarred under § 263.402 may be made in writing at any time. The request shall contain a concise statement of the action requested. The Board may require the petitioner to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Board, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. The Board may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

By order of the Board of Governors of the Federal Reserve System.

Dated: August 6, 2003.

Jennifer J. Johnson,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Authority and Issuance

■ For the reasons set out in the joint preamble, part 308, chapter III, title 12 of the Code of Federal Regulations is amended as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C.

78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

■ 2. Section 308.109(b)(3) is amended to add a new sentence before the last sentence to read as follows:

§ 308.109 Suspension and disbarment.

* * * * *

(b) * * *

(3) * * * The application must comply with the requirements of § 303.3 of this chapter. * * *

* * * * *

■ 3. A new Subpart U is added to read as follows:

Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.

308.600 Scope.
308.601 Definitions.
308.602 Removal, suspension, or debarment.
308.603 Automatic removal, suspension, and debarment.
308.604 Notice of removal, suspension, or debarment.
308.605 Application for reinstatement.

§ 308.600 Scope.

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

§ 308.601 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

§ 308.602 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment.*

(1) *Individuals.* The Board of Directors may remove, suspend, or debar an independent public accountant under section 36 of the FDIA from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if, after service of a notice of intention and opportunity for hearing in the matter, the Board of Directors finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)) (Sarbanes-Oxley Act) and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the FDIC or any officer or employee of the FDIC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 308.603, on grounds relevant to the provision of audit services; or

(vii) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) *Accounting firms.* If the Board of Directors determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Board of Directors also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or an office thereof, and the term of any sanction against an accounting firm under this section, the Board of Directors may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board of Directors, be made applicable to a limited number of insured depository institutions for which the FDIC is the appropriate Federal banking agency.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the FDIC may have under any other applicable provision of law, rule, or regulation.

(b) *Proceedings to remove, suspend or debar.* (1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board of Directors may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations contained in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and

Procedure (12 CFR part 308, subpart A) (Uniform Rules).

(c) *Immediate suspension from performing audit services.*

(1) *In general.* If the Board of Directors serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board of Directors may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the Board of Directors:

(i) Has a reasonable basis to believe that the accountant or accounting firm has engaged in conduct (specified in the notice served upon the accountant or accounting firm under paragraph (b)(1) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board of Directors dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Board of Directors to the respondent.

(3) *Petition to stay.* Any accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Executive Secretary for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Executive Secretary will designate a presiding officer who will fix a place and time (not more than 10 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any FDIC employee engaged in investigative or prosecuting functions for the FDIC in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the FDIC, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses also may be presented. Enforcement counsel may represent the agency at the hearing. In hearings held pursuant to this paragraph there shall be no discovery, and the provisions of §§ 308.6 through 308.12, § 308.16, and § 308.21 of the Uniform Rules will apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer will issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice of intention. The presiding officer will serve a copy of the decision on, and simultaneously certify the record to, the Executive Secretary.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the Executive Secretary within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the Executive Secretary will promptly certify the entire record to the Board of Directors. Within 60 calendar days of the Executive Secretary's certification, the Board of Directors will issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order will state the basis of the Board's decision.

§ 308.603 Automatic removal, suspension, and debarment.

(a) An independent public accountant or accounting firm may not perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B)); or

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(b) Upon written request, the FDIC, for good cause shown, may grant written permission to such accountant or firm to perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency. The written request must comply with the requirements of § 303.3 of this chapter.

§ 308.604 Notice of removal, suspension, or debarment.

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the FDIC will make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the FDIC by accountants and firms.* An accountant or accounting firm that provides audit services to any insured depository institution for which the FDIC is the appropriate Federal banking agency must provide the FDIC with written notice of:

(1) any currently effective order or other action described in §§ 308.602(a)(1)(vi) through (a)(1)(vii) or §§ 308.603(a)(2) through (a)(3); and

(2) any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

§ 308.605 Application for reinstatement.

(a) *Form of petition.* Unless otherwise ordered by the Board of Directors, an application for reinstatement by an

independent public accountant, an accounting firm, or an office of a firm that was removed, suspended, or debarred under § 308.602 may be made in writing at any time. The application must comply with the requirements of § 303.3 of this chapter.

(b) *Procedure.* An applicant for reinstatement under this section may, in the sole discretion of the Board of Directors, be afforded a hearing. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application, and the Board of Directors may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board of Directors, for good cause shown, has reinstated the applicant or until the suspension period has expired. The filing of an application for reinstatement will not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated: August 4, 2003.

Valerie J. Best,

Assistant Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

Authority and Issuance

PART 513—PRACTICE BEFORE THE OFFICE

■ For the reasons set out in the joint preamble, part 513 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for part 513 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1813, 1831m, and 15 U.S.C. 78.

■ 2. Add § 513.8 to read as follows:

§ 513.8 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured savings associations and savings and loan holding companies.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

(1) *Accounting firm.* The term *accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(2) *Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA Act and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a savings association that is used to satisfy requirements imposed by section 36 or part 363 on that savings association.

(3) *Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The Office may remove, suspend, or debar an independent public accountant from performing audit services for savings associations that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Office finds that the independent public accountant:

(1) Lacks the requisite qualifications to perform audit services;

(2) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to independent public accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(3) Has engaged in negligent conduct in the form of: (i) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an independent public accountant knows, or should know, that heightened scrutiny is warranted; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in any way in the giving of false or misleading information to the Office or any officer or employee of the Office;

(5) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(6) Has been removed, suspended, or debarred from practice before any federal or state agency regulating the banking, insurance, or securities industries, other than by action listed in paragraph (j) of this section, on grounds relevant to the provision of audit services; or

(7) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(d) *Removal, suspension or debarment of an accounting firm.* If the Office determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (c) of this section, the Office also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or office thereof, and the term of any sanction against an accounting firm under this section, the Office may consider, for example:

(1) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(2) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(3) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(4) The extent to which managing partners or senior officers of the accounting firm have participated, directly or indirectly through oversight or review, in the act or failure to act; and

(5) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(e) *Remedies.* The remedies provided in this section are in addition to any other remedies the Office may have under any other applicable provisions of law, rule, or regulation.

(f) *Proceedings to remove, suspend, or debar.* (1) The Office may initiate a proceeding to remove, suspend, or debar

an independent public accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) An independent public accountant or accounting firm named as a respondent in the notice issued under paragraph (f)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 509).

(g) *Immediate suspension from performing audit services.* (1) If the Office serves written notice of intention to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services, the Office may, with due regard for the public interest and without preliminary hearing, immediately suspend an independent public accountant or accounting firm from performing audit services for savings associations, if the Office:

(i) Has a reasonable basis to believe that the independent public accountant or accounting firm engaged in conduct (specified in the notice served upon the independent public accountant or accounting firm under paragraph (f) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (c) or (d) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such independent public accountant or accounting firm with written notice of the immediate suspension.

(2) An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Office dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Office to the independent public accountant or accounting firm.

(h) *Petition to stay.* (1) Any independent public accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (g) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Office for a stay of such suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(2) Upon receipt of a stay petition, the Office will designate a presiding officer who shall fix a place and time (not more than 10 calendar days after receipt of such petition, unless extended at the request of the petitioner), at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any OTS employee engaged in investigative or prosecuting functions for the OTS in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the OTS, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph, there will be no discovery and the provisions of §§ 509.6 through 509.12, 509.16, and 509.21 of the Uniform Rules will apply.

(3) Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(4) The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer must promptly certify the entire record to the Director. Within 60 calendar days of the presiding officer's certification, the Director shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Director's decision.

(i) *Scope of any order of removal, suspension, or debarment.* (1) Except as provided in paragraph (i)(2), any independent public accountant or accounting firm that has been removed, suspended (including an immediate suspension), or debarred from performing audit services by the Office may not, while such order is in effect, perform audit services for any savings association.

(2) An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Office, be made applicable to a limited number of savings associations or savings and loan holding companies (limited scope order).

(j) *Automatic removal, suspension, and debarment.* (1) An independent public accountant or accounting firm may not perform audit services for a savings association if the independent public accountant or accounting firm:

(i) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency under section 36 of the FDIA;

(ii) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B)); or

(iii) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(2) Upon written request, the Office, for good cause shown, may grant written permission to an independent public accountant or accounting firm to perform audit services for savings associations. The request must contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(k) *Notice of removal, suspension, or debarment.* (1) Upon issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Office shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(2) An independent public accountant or accounting firm that provides audit services to a savings association must provide the Office with written notice of:

(i) Any currently effective order or other action described in paragraphs (c)(6) through (c)(7) or paragraphs (j)(1)(ii) through (j)(1)(iii) of this section; and

(ii) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(3) Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action or 15 calendar days before an independent public accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

(l) *Application for reinstatement.* (1) Unless otherwise ordered by the Office, an independent public accountant, accounting firm, or office of a firm that was removed, suspended or debarred under this section may apply for reinstatement in writing at any time. The request shall contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(2) An applicant for reinstatement under paragraph (l)(1) of this section may, in the Office's sole discretion, be afforded a hearing. The independent public accountant or accounting firm shall bear the burden of going forward with an application and the burden of proving the grounds supporting the application. The Office may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Office, for good cause shown, has reinstated the applicant or until, in the case of a suspension, the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an independent public accountant or accounting firm.

Dated: August 5, 2003.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 03–20565 Filed 8–12–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–142–AD; Amendment 39–13272; AD 2003–16–19]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Learjet Model 45 airplanes. This action requires replacement of the horizontal stabilizer actuator assembly (HSAA) with a new HSAA. This action is necessary to prevent structural failure of the HSAA, which could result in possible loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 13, 2003.

Comments for inclusion in the Rules Docket must be received on or before October 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–142–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Greg David, Aerospace Engineer, Airframe and Propulsion Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4128; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2003, the FAA issued AD 2003–06–51, amendment 39–13121 (68 FR 19328, April 21, 2003), applicable to certain Learjet Model 45 airplanes, to require an inspection to determine the part number (P/N) of the horizontal stabilizer actuator assembly (A66) (HSAA), and replacement of any suspect HSAA (A66) having P/N 6627401000–001 or SA9200F with a new or serviceable HSAA (A66) having P/N 6627401000–005. That action was prompted by a report of severe vibration followed by a rapid nose down pitch change on a Learjet Model 45 airplane. The cause of the incident is attributed to brittle fracture material properties of certain components of the HSAA. The requirements of that AD are intended to prevent structural failure of the HSAA, which could result in possible loss of control of the airplane.

FAA's Determination Since Issuance of AD 2003–06–51

Since issuance of AD 2003–06–51, we have determined that the MPC Products Corporation acme screw having P/N 2A94568008 and nut having P/N 2A94567005 within the new HSAA having P/N 6627401000–005 installed per that AD are physically similar (not identical) to and have the same material as the suspect assembly having P/N 6627401000–001. Although the HSAA having P/N–005 is an improvement over the P/N–001, it was not manufactured per the type design data. A brittle fracture could occur on the acme screw and nut within the assembly having P/N–005, similar to that on the assembly having P/N–001. During our investigation of this problem, we determined that the configuration and quality controls over the production of these parts were so deficient that we do not have confidence that the airplane can be operated safely for any period of time. Therefore, this AD allows operation only for the purpose of positioning the airplane where the replacement required by this AD can be accomplished. The airplane manufacturer is currently substantiating the design data for the new replacement part. We anticipate that the new part will be available in the near future.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, this AD requires replacement of the HSAA with a new HSAA. The effect of this AD is that operation is prohibited after the effective date of this AD, except to position the airplane as described previously, until the required replacement can be accomplished.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–16–19 Learjet: Amendment 39–13272. Docket 2003–NM–142–AD.

Applicability: All Model 45 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the horizontal stabilizer actuator assembly (HSAA), which could result in possible loss of control of the airplane, accomplish the following:

Replacement

(a) Except as provided by paragraph (b) of this AD, before further flight after the effective date of this AD, replace the HSAA having part number (P/N) 6627401000–005 with a new HSAA, per a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Flight Limits

(b) Non-revenue flights are permitted within 3 days after the effective date of this AD only for the purpose of positioning the airplane to a location where the replacement required by paragraph (a) of this AD can be accomplished.

Parts Installation

(c) As of the effective date of this AD, no person may install an HSAA, P/N 6627401000–005, on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Effective Date

(e) This amendment becomes effective August 13, 2003.

Issued in Renton, Washington, on August 8, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20699 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30382 ; Amdt. No. 3070]

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.

DATES: This rule is effective August 13, 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 August 13, 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, U.S. 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 Instrument 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 August 1, 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
07/16/03	TX	Waco	TSTC Waco	3/6036	NDB Rwy 35R, Amdt 10A
07/16/03	CT	Windsor Locks	Bradley Intl	3/6058	RNAV (GPS) Z Rwy 6, Orig
07/16/03	CT	Windsor Locks	Bradley Intl	3/6059	RNAV (GPS) Rwy 24, Orig
07/16/03	CT	Windsor Locks	Bradley Intl	3/6060	RNAV (GPS) Rwy 33 Orig
07/16/03	RI	Providence	Theodore Francis Green State	3/6061	RNAV (GPS) Z Rwy 5, Orig
07/16/03	RI	Providence	Theodore Francis Green State	3/6062	RNAV (GPS) Rwy 34, Orig
07/16/03	RI	Providence	Theodore Francis Green State	3/6063	RNAV (GPS) Rwy 23, Orig
07/16/03	TX	Killeen	Killeen Muni	3/6076	ILS Rwy 1, Amdt 2A
07/17/03	AR	Corning	Corning Muni	3/6174	GPS Rwy 18, Orig
07/17/03	AR	Corning	Corning Muni	3/6176	GPS Rwy 36, Orig
07/21/03	PA	Bradford	Bradford Regional	3/6263	RNAV (GPS) Rwy 32, Orig
07/21/03	PA	Bradford	Bradford Regional	3/6264	RNAV (GPS) Z Rwy 14, Orig
07/22/03	CO	Rifle	Garfield County Regional	3/6358	LOC/DME–A, Amdt 6
07/22/03	CO	Rifle	Garfield County Regional	3/6359	ILS Rwy 26, Orig
07/22/03	CO	Eagle	Eagle County Regional	3/6360	LOC–B, Amdt 1A
07/23/03	ID	Boise	Boise Air Terminal (Gowen Field)	3/6434	RNAV (GPS) Rwy 10R, Orig
07/24/03	CO	Denver	Denver Intl	3/6489	ILS Rwy 35R (CAT I,II,III), Amdt 1A
07/24/03	CO	Denver	Denver Intl	3/6490	ILS Rwy 35L (CAT I,II,III), Amdt 3A
07/24/03	CO	Denver	Denver Intl	3/6491	ILS Rwy 34R (CAT I,II,III), Amdt 1A
07/24/03	TX	Brenham	Brenham Muni	3/6517	RNAV (GPS) Rwy 16, Orig
07/28/03	PA	Philadelphia	Philadelphia Intl	3/6470	NDB Rwy 27L, Amdt 5A
07/28/03	MS	Meridian	Key Field	3/6471	ILS Rwy 1, Amdt 23
07/28/03	AR	De Queen	J. Lynn Helms Sevier County	3/6694	GPS Rwy 8, Orig–A
07/28/03	TX	Brenham	Brenham Muni	3/6708	RNAV (GPS) Rwy 34, Orig
07/28/03	AR	Carlisle	Carlisle Muni	3/6717	VOR/DME Rwy 9, Amdt 2A
07/30/03	CO	Alamosa	San Luis Valley Regional—Bergman Field.	3/6695	ILS Rwy 2, Orig

[FR Doc. 03–20395 Filed 8–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30381; Amdt. No. 3069]

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 the adoption of new or revised criteria, or 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.

DATES: This rule is effective August 13, 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 August 13, 2003.

ADDRESSES: Availability of matters 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 the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of 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, U.S. 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 Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. 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 on 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 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) 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 some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, 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 SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. 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 some 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 August 1, 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, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 4, 2003*

Meeker, CO, Meeker, VOR/DME RNAV OR GPS RWY 3, Orig, CANCELLED
Meeker, CO, Meeker, VOR–A, Amdt 1
Meeker, CO, Meeker, RNAV (GPS)–B, Orig
Meeker, CO, Meeker, RNAV (GPS) RWY 3, Orig
Presque Isle, ME, Northern Maine Regional Airport at Presque Isle, RNAV (GPS) RWY 28, Orig
Westhampton Beach, NY, Francis S. Gabreski, RNAV (GPS) RWY 6, Orig
Westhampton Beach, NY, Francis S. Gabreski, RNAV (GPS) RWY 24, Orig
Westhampton Beach, NY, Francis S. Gabreski, NDB RWY 24, Amdt 3D
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Amdt 1
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 35L, Amdt 1
Oshkosh, WI, Wittman Regional, RNAV (GPS) RWY 36, Amdt 1

** * * Effective October 2, 2003*

Old Town, ME, Dewitt Field Old Town Muni, RADAR–1, Amdt 2, CANCELLED
Granbury, TX, Granbury Muni, VOR/DME RWY 14, Amdt 1

** * * Effective October 30, 2003*

Willimantic, CT, Windham, VOR–A, Amdt 9
Willimantic, CT, Windham, RNAV (GPS) RWY 9, Orig
Willimantic, CT, Windham, RNAV (GPS) RWY 27, Orig
Willimantic, CT, Windham, GPS RWY 9, Orig, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RWY 23, Amdt 1, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RWY 18L, Amdt 6A, CANCELLED
Charlotte, NC, Charlotte/Douglas Intl, NDB RWY 23, Amdt 7, CANCELLED
Corvallis, OR, Corvallis Muni, VOR–A, Amdt 10
Van Horn, TX, Culberson County, NDB RWY 21, Amdt 2
Van Horn, TX, Culberson County, RNAV (GPS) RWY 21, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, VOR–B, Amdt 4A
Rock Springs, WY, Rock Springs-Sweetwater County, NDB–C, Amdt 2A
Rock Springs, WY, Rock Springs-Sweetwater County, ILS OR LOC/DME RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt 5A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, GPS RWY 27, Orig, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Z RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Y RWY 27, Orig

■ The FAA published an Amendment in Docket No. 30378, Amdt No. 3067 to Part 97 of the Federal Aviation Regulations (Vol 68 FR No. 144, Page 44205; dated July 28, 2003) under Section 97.33 effective 04 September 2003, which is hereby amended as follows:

Change the Following Eff Date to 30 October 2003 for the Following Procedures

Rock Springs, WY, Rock Springs-Sweetwater County, VOR–B, Amdt 4A

Rock Springs, WY, Rock Springs-Sweetwater County, NDB–C, Amdt 2A
Rock Springs, WY, Rock Springs-Sweetwater County, ILS OR LOC/DME RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt 5A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, GPS RWY 27, Orig, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Z RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Y RWY 27, Orig

■ The FAA published an Amendment in Docket No. 30378, Amdt No. 3067 to Part 97 of the Federal Aviation Regulations (Vol 68, FR No. 144, Page 44204; dated July 28, 2003) under Section 97.33 effective 04 September 2003, which is hereby amended as follows:

Kamuela, HI, Waimea-Kohala, VOR/DME–A, Orig
Kamuela, HI, Waimea-Kohala, VOR/DME RWY 4, Orig
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 4, Orig
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 22, Orig

■ The FAA published the following procedures in Docket No. 30378; Amdt. No. 3067 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 144, Page 44204; dated Monday, July 28, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 18, Orig
Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 36, Orig

[FR Doc. 03–20397 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 4

[CBP Decision 03–16]

RIN 1515–AD35

Tonnage Duties—Revised Amounts

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the rules dealing with vessels in foreign and domestic trades by revising the amounts of tonnage duties applicable to those entering the United States from a foreign port. These revisions are necessary to reflect recent changes in the pertinent statutory provisions.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Entry Procedures & Carriers Branch, (202) 572–8730.

SUPPLEMENTARY INFORMATION:

Background

Customs and Border Protection (CBP) assesses and collects tonnage duties and light money on vessels brought into the United States from a foreign port or place, under the authority of 46 U.S.C. App. 121. Tonnage duties, which are in effect charges for the privilege of entering, trading in, or lying in a port, cover the expenses incurred in clearing and improving harbors, erecting lighthouses and keeping up lights. The amount of tonnage duty depends on the registry of the vessel, subject to certain exemptions, as prescribed by law.

On November 5, 1990, the President signed the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which amended 46 U.S.C App. 121 to increase the tonnage taxes collected from vessels arriving in the United States from foreign ports. The amendment intended to offset the costs incurred by Coast Guard operations. For vessels calling on the United States from North American ports and certain Central American, South American and Caribbean ports, the amount of tonnage tax was increased to 9 cents per ton, not to exceed in the aggregate 45 cents per ton per annum. For vessels entering a port of the United States from any other foreign port or place, the amount of tonnage tax was increased to 27 cents per ton, not to exceed $1.35 per ton per annum. These increases were in effect until the end of fiscal year 2002; thereafter the duties were to revert to the same amount as in effect prior to the passage of this legislation.

Congress has not enacted legislation renewing these provisional tonnage duty rates. In accordance with the statute, the tonnage tax rates have reverted to the previous rates of 2 cents per ton (10 cents annual aggregate cap) for vessels arriving in the United States from the first group of ports and 6 cents per ton (30 cents annual aggregate cap) for vessels arriving from all other originating ports.

Thus, CBP has determined that current statutory provisions require CBP to amend Part 4 of the Customs Regulations (19 CFR 4.20) to revise the amounts of tonnage duties applicable to vessels entering from a foreign port or place. Following is a summary of those changes.

Discussion of Changes

1. Section 4.20(a) generally provides for the payment of tonnage tax on vessels entering from a foreign port or place. Section 4.20(a) is revised to reflect changes in the regular tonnage duty applicable in such circumstances.

2. Section 4.20(b) is amended to reflect the revised maximum assessment amount of tonnage duty of a vessel per tonnage year. The revised aggregate amount for vessels arriving in the United States from North American ports, certain Central American, South American and Caribbean ports is 10 cents per ton. For vessels arriving from all other originating ports the revised amount is 30 cents per ton.

3. Section 4.20(c) generally provides for the payment of special tonnage tax and light money on vessels entering from a foreign port or place. The present table in this section listing the vessel tonnage and light money rates payable under various conditions is revised to reflect the current tonnage duty rates.

The following chart indicates the provisional tonnage tax amount that has expired and the currently assessed amount.

Vessels entering U.S. from	Provisional tonnage tax per ton (annual cap)	Current tonnage tax per ton (annual cap)
North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, the coast of South America bordering on the Caribbean Sea, or the high seas adjacent to the U.S. or the above listed foreign locations	9¢ (45¢)	2¢ (10¢)
Any other foreign port	27¢ ($1.35)	6¢ (30¢)

Inapplicability of Public Notice and Comment and Delayed Effect Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law as noted above, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

For the same reasons, the amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866. Accordingly, a regulatory impact analysis it is not required thereunder.

Drafting Information

The principal author of this document was Fernando Peńa, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastal zone, Coastwise trade, Customs duties and inspection, Entry, Fees, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels, and Yachts.

Amendments to the Regulations

■ For the reasons stated above, part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority citation for § 4.20 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section § 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306,14502, 14511, 14512, 14513, 14701, 14702; 46 U.S.C. App. 121, 128;

* * * * *

■ 2. Amend § 4.20 as follows:
■ a. In paragraph (a):
■ i. all references to the number ''9'' are removed and, in their place, the number ''2'' is added;
■ ii. all references to the number ''27'' are removed and, in their place, the number ''6'' is added;
■ iii. the reference to the number ''45'' is removed and, in its place, the number ''10'' is added; and,
■ iv. the figure ''$1.35'' is removed and, in its place, the number ''30'' is added.
■ b. In paragraph (b):
■ i. the reference to the number ''9'' is removed and, in its place, the number ''2'' is added;
■ ii. the reference to the number ''27'' is removed and, in its place, the number ''6'' is added; and,
■ iii. the figure ''$1.80'' is removed and, in its place, the figure ''40 cents'' is added.
■ c. In the table under paragraph (c), in the column headed ''Regular tax'':
■ i. the figure ''0.09'' and all the figures reading ''.09'' are removed and, in their place, the figure ''.02'' is added; and,
■ ii. the figure ''0.27'' and all the figures reading ''.27'' are removed and, in their place, the figure ''.06'' is added.

Dated: August 7, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20568 Filed 8–12–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA96

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: This final rule modifies the current regulatory definition of ''direct earned premium'' in the regulations under Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. The Department of the Treasury (Treasury) is responsible for implementing the Act. This final rule clarifies the current regulatory definition of ''direct earned premium'' to parallel the definition of ''direct earned premium'' in section 102(4) of the Act.

DATES: This final rule is effective August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On July 11, 2003, Treasury published a final rule containing definitions and other general provisions under the Act (68 FR 41250, July 11, 2003) (the July final rule). Treasury is now making a clarifying revision to the definition of ''direct earned premium'' in the July final rule to ensure that the rule parallels the definition in section 102(4) of the Act.

Under section 102(6) of the Act, an ''insurer'' calculates its ''insurer deductible'' based on the insurer's ''direct earned premium.'' Except in the case of new insurers, an ''insurer deductible'' is an insurer's direct earned premiums over the preceding calendar year, multiplied by a percentage specified in the Act for that year. If a certified act of terrorism occurs, an insurer would only be entitled to federal payment under the Program if the insurer's insured losses exceed its insurer deductible and other required conditions are met.

Section 102(4) of the Act defines the term ''direct earned premium'' as ''a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring *at the locations described*'' in section 102(5)(A) and (B) of the Act (emphasis added). These cross-referenced locations appear within the definition of ''insured loss.'' The locations are (1) ''within the United States,'' (2) ''to an air carrier'' (as defined), (3) ''to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States),'' and (4) ''at the premises of any United States mission.'' Therefore, there is a relationship between the locations contained in the definition of ''insured loss'' and the scope of the definition of ''direct earned premium,'' since both make reference to the same specified locations.

The July final rule was preceded by an interim final rule that requested public comments (68 FR 9804, February 28, 2003). No comments were received on the interim final rule concerning the relationship of the terms ''insured loss'' and ''direct earned premium.'' Upon further review, Treasury notes that the current regulatory definition of ''direct earned premium'' in the July final rule could be interpreted as inconsistent with the statutory definition of ''direct earned premium.'' This is because the

regulatory definition ''direct earned premium'' includes an abbreviated reference to ''insured losses'' under the Program. Treasury's intent was to reflect the statutory definition, including the specified locations, as described above. An unintended consequence of the current text of the regulatory definition of direct earned premium is that it might be read to narrow the statutory definition of ''direct earned premium'' to refer only to direct earned premiums for losses resulting from acts of terrorism rather than direct earned premiums on all commercial property and casualty insurance covering all risks within the specified locations.

After further review of the definition in the July final rule, Treasury is by this final rule revising the regulatory definition of ''direct earned premium'' in section 50.5(d) to ensure that it parallels the definition in the Act. Treasury is also revising the related provisions in the definition of direct earned premium for State licensed or admitted insurers that report to the NAIC and certain eligible surplus line carrier insurers. (Although there are no changes to some of these provisions, paragraphs (d)(1) and (d)(3) of section 50.5(d) are being set out in their entirety for ease of reading and understanding.) The effect of these changes to the current regulatory text is to clarify that direct earned premium, as provided in the Act, consists of direct earned premium for all commercial property and casualty insurance (as that term is used in the Act and Treasury's regulations) issued by an insurer for insurance against losses at the specified locations. Consistent with the preamble discussion in the July final rule, premiums for retroactive insurance may continue to be excluded by an insurer if they are associated with losses that occurred prior to the date of enactment of the Act (November 26, 2002). An insurer receiving premiums for retroactive insurance associated with losses that occurred prior to November 26, 2002 may continue to follow the guidelines in section 50.5(d)(1) for the purposes of calculating the appropriate measure of direct earned premium.

Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Treasury has issued and will be issuing additional regulations to implement the Program. This final regulation merely clarifies the current regulatory definition of ''direct earned premium'' to parallel the definition in the Act. Since no one can predict if, or when, an act of terrorism may occur, there is a clear need for Treasury to modify the previously issued final rule to clarify the definition and avoid any possible reading that it is narrower than the definition in the Act. Moreover, the definition in the Act is unambiguous and the regulatory change merely clarifies the current regulatory definition to parallel the definition in the Act.

For these reasons, Treasury has determined that notice and public procedure are unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for this final rule to become effective immediately upon publication.

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Section 50.5(d) introductory text is revised, and (d)(1) and (d)(3) are revised to read as follows:

§ 50.5 Definitions.

* * * * *

(d) *Direct earned premium* means a direct earned premium for all commercial property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance.)

(i) Premium information as reported to the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent of commercial property and casualty coverage issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures, with the exception of coverage written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of commercial property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Commercial property and casualty insurance coverage insuring against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of commercial property and casualty insurance, but that includes incidental coverage for commercial property and casualty insurance insuring against losses occurring at such locations, is primarily non-Program coverage, and therefore premiums also may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial property and casualty insurance coverage insuring against losses at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the

total direct earned premium is attributable to such coverage. For purposes of the Program, commercial coverage combined with coverages that otherwise do not meet the definition of commercial property and casualty insurance is incidental if less than 25 percent of the total direct earned premium is for such coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of commercial property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components, in order to ascertain direct earned premium.

* * * * *

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definition of property and casualty insurance and the locations described in section 102(5)(A) and (B) of the Act by allocating the appropriate portion of premium income for losses for property and casualty insurance at such locations. The same allocation methodologies contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage for property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act and all other coverage, to ascertain the appropriate percentage of premium income to be included in direct earned premium, may be used.

(ii) For policies issued after January 1, 2003, premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, must be priced separately by such eligible surplus line carriers.

* * * * *

Dated: August 5, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–20644 Filed 8–12–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–025]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones during the tow and moor operations of the caissons being used for the Tacoma Narrows Bridge construction project. The Coast Guard is taking this action to safeguard the public from hazards associated with the transport and construction of the caissons being used to construct piers for the new bridge. These safety hazards include, but are not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. Entry into these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from August 6, 2003 through February 6, 2004.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Tyana Thayer c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. The Coast Guard did not initially intend to issue a safety zone for this project. However, recent events of boaters navigating too close to the construction zone and reports of scuba divers diving near the caissons make a safety zone necessary. If normal notice and comment procedures were followed, this rule would not become effective in sufficient time. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation on the Tacoma Narrows and adjoining waters, for the Tacoma Narrows Bridge Project. The Coast Guard has determined it is necessary to limit access to a 250-yard radius around each of the two new bridge piers. Caissons are being used to build the new bridge piers. The new bridge piers are located just north of the existing Tacoma Narrows Bridge. The dangers to persons and vessels transiting this area include, but are not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of persons and vessels in the area. Entry into these zones will be prohibited unless authorized by the Captain of the Port. Coast Guard personnel will enforce these safety zones. The Captain of the Port may be assisted by other Federal, State, or local agencies.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small

area that should not impact commercial or recreational traffic. The Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of the Tacoma Narrows when this rule is in effect. The zone will not have a significant economic impact due to its short duration and small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 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.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of the bridge construction, and the Coast Guard's commitment to working with the Tribes, we have determined that safety in the vicinity of the bridge construction project and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

The Coast Guard's preliminary review indicates this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES.** All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

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

Final Rule

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From August 6, 2003 through February 6, 2004, a temporary § 165.T13–016 is added to read as follows:

§ 165.T13–016 Safety Zone Regulations; New Tacoma Narrows Bridge Construction Project.

(a) *Locations.* The following areas are safety zones: All waters of the Tacoma Narrows, Puget Sound, and adjoining waters of Washington State, within a 250 yard radius around each of the following coordinates (which are the

approximate center points of the two new bridge piers): (1) 47°15′54.08″ North; 122°32′49.65″ West; and (2) 47°16′15.07″ North; 122°33′15.95″ West [Datum: NAD 1983].

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, this Temporary Final Rule applies to any person or vessel in the navigable waters of the United States. No person or vessel may enter or remain in the above safety zones, unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Applicable dates.* This section applies from August 6, 2003 through February 6, 2004.

Dated: August 5, 2003.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–20652 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Wilmington 03–117]

RIN 1625–AA00

Safety Zone; Bogue Sound, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is enacting a temporary Safety Zone in the Atlantic Intracoastal Waterway (AICW) in the vicinity of Marine Corps Base Camp Lejeune, NC. Naval gunfire will be conducted crossing the AICW from offshore in the vicinity of N–1/BT3 impact area and impacting areas in Camp Lejeune during dates and times as specified below. This safety zone is needed to ensure the safety of persons and vessels operating on the AICW in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 12 p.m. on August 15, 2003 to 4 p.m. on August 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Wilmington 03–117 and are available for inspection or copying at Coast Guard Marine Safety Office Wilmington, 721 Medical Center Drive, Wilmington, NC 28401 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington, telephone number (910) 772–2207.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public and required to ensure the safety or persons and vessels operating on the Atlantic Intracoastal Waterway (AICW) in this area at the times specified. Advanced notice was not received from the originator that would have allowed publication to occur in the **Federal Register.**

Background and Purpose

Naval gunfire will be conducted crossing the AICW and impacting areas in Camp Lejeune from 12 p.m. to 4 p.m. Eastern Daylight Time on August 15, 19 & 20, 2003. The safety zone is in effect to ensure the safety of persons and vessels operating on the AICW in this area.

Discussion of Rule

The safety zone will cover the AICW extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230). This safety zone will be in effect to ensure the safety of persons and vessels operating on the AICW in this area. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard or U.S. Navy vessel will patrol each end of the safety zone to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

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). This rule only affects a small portion, less than two miles, of the AICW in North Carolina for a limited time. The regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

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 or anchor in a portion of the AICW from 12 p.m. to 4 p.m. Eastern Daylight Time on August 15, 19 & 20, 2003. The Coast Guard expects a minimal economic impact on a substantial number of small entities due to this rule because little commercial traffic transits this area of the AICW.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. Small Entities requesting guidance or exemption from this rule may contact LCDR Chuck Roskam, Chief, Port Operations, USCG Marine Safety Office Wilmington at (910) 772–2207.

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 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 recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary section § 165.T05–117 to read as follows:

§ 165.T05–117 Safety Zone: Atlantic Intracoastal Waterway from Bogue Sound-New River, Daybeacon 58 (LLNR 39210) southeast to Bogue Sound—New River Light 64 (LLNR 39230).

(a) *Location.* The following area is a safety zone: the Atlantic Intracoastal Waterway (AICW) extending from Bogue Sound-New River Daybeacon 58 (LLNR 39210) southeast to Bogue Sound-New River Light 64 (LLNR 39230), Nautical Chart 11541, Intracoastal Waterway—NC–Neuse River to Myrtle Grove Sound.

(b) *Definition. Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, North Carolina, or any Coast Guard Commissioned, Warrant, or Petty Officer who has been authorized by the Captain of the Port to act on his/her behalf.

(c) *Enforcement periods.* This section will be effective from 12 p.m. on August 15, 2003 through 4 p.m. on August 20, 2003. This section will be enforced from 12 p.m. through 4 p.m. on August 15, 2003 and August 19 through August 20, 2003.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port. All vessel movement within the safety zone will be prohibited except as specifically authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this regulation.

(2) Red warning flags or red warning lights will be displayed on towers located at both ends of the safety zone while firing exercises are in progress. The flags or lights will be displayed by 8 a.m. each day that this section is in effect, and will be removed at the end of firing exercises.

(3) A Coast Guard or Navy vessel will patrol each end of the safety zone to ensure the public is aware that firing exercises are in progress and that the firing area is clear of vessel traffic before weapons are fired.

(4) Vessels requiring entry into or passage through any portion of the Safety Zone must first request authorization from the Captain of the Port or the Coast Guard or U.S. Navy vessel on-scene. The Captain of the Port can be contacted at telephone number 1-(800) 325–4965. The Coast Guard or U.S. Navy vessel may be contacted by radio on VHF Marine Band Radio, channels 13 (156.65 MHz) and 16 (156.8 MHz).

(e) The Captain of the Port will notify the public of changes in the status of this Safety Zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: August 4, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 03–20653 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2003–T–024]

RIN 0651–AB68

Reorganization of Correspondence and Other General Provisions

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') is amending its rules to separate the provisions for patent matters and trademark matters with respect to filing correspondence, requesting copies of documents, payment of fees, and general information. Specifically, the Office is amending its Rules of Practice in Patent Cases to delete all references to trademark matters, and amending its Rules of Practice in Trademark Cases to add new rules setting forth provisions for corresponding with and paying fees to the Office in trademark cases, and for requesting copies of trademark documents.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; by e-mail to *mary.hannon@uspto.gov;* by facsimile transmission addressed to her at (703) 872–9280; or by mail marked to her attention and addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

SUPPLEMENTARY INFORMATION: The Office is amending its rules to separate the provisions for patent and trademark matters with respect to correspondence, requesting copies of documents, payment of fees, and general information. Specifically, the Office is (1) amending 37 CFR Part 1 to delete all references to trademarks, and (2) amending 37 CFR Part 2 to add new rules setting forth provisions for corresponding with and paying fees to the Office in trademark cases, and for requesting copies of trademark documents.

Discussion of Specific Rules

The Office is amending rules 1.1, 1.4, 1.5, 1.6, 1.8, 1.10, 1.12, 1.13, 1.22, 1.26, 2.1, 2.2, 2.6, and 2.123; and adding new rules 2.190, 2.191, 2.192, 2.193, 2.194, 2.195, 2.196, 2.197, 2.198, 2.200, 2.201, 2.206, 2.207, 2.208, and 2.209.

The Office is removing § 1.1(a)(2), amending § 1.1(a) to delete reference to § 1.1(a)(2), amending § 1.1(a)(4) to delete reference to trademark-related documents, and revising the note following § 1.1(f) to delete the reference to ''trademark cases.''

The Office is removing and reserving § 1.4(d)(1)(iii), amending § 1.4(d)(1)(ii) to change a semicolon to a period, and amending §§ 1.4(a)(1), (a)(2), (b) and (d)(1) to delete references to trademark applications, trademark registrations, and trademark filings.

The Office is removing and reserving § 1.5(c).

The Office is removing and reserving §§ 1.6(a)(4), (d)(7) and (d)(8), and revising §§ 1.6(d), (d)(3), and (d)(4) to delete all references to trademark matters.

The Office is removing and reserving § 1.8(a)(2)(ii).

The Office is amending § 1.10(a) to delete all references to trademark correspondence.

The Office is amending § 1.12(a) to delete all references to trademark assignments.

The Office is amending § 1.13 to delete all references to copies of trademark documents.

The Office is amending § 1.22 to delete all references to trademark fees and trademark registration files.

The Office is amending § 1.26(a) to delete the reference to trademark filing.

The Office is removing and reserving § 2.1, which provides that §§ 1.1 to 1.26 of this chapter apply to trademark cases.

The Office is amending § 2.2 to add definitions of ''Director,'' ''Office,'' ''TEAS,'' and ''Federal holiday within the District of Columbia.''

The Office is adding a new § 2.6(b)(12), requiring a fee for processing any payment refused or charged back by a financial institution. This is consistent with current § 1.21(m).

The Office is adding a new § 2.6(b)(13), setting forth the fee for establishing a deposit account, and a service charge for each month when the balance at the end of the month is below $1,000. This is consistent with current §§ 1.21(b)(1) and (2).

The Office is amending § 2.123(f)(2) to change a cross-reference.

The Office is adding a new § 2.190, setting forth the addresses for trademark correspondence. This is consistent with current §§ 1.1(a)(2) and 1.1(a)(4).

The Office is adding a new § 2.191, providing that business with the Office must be transacted in writing, and that no attention will be paid to any alleged oral promise, stipulation, or understanding. This is consistent with current § 1.2.

The Office is adding a new § 2.192, providing that business must be conducted with decorum and courtesy. This is consistent with current § 1.3.

The Office is adding a new § 2.193, setting forth the requirements for correspondence and signatures in trademark cases. This is consistent with current § 1.4.

The Office is adding a new § 2.194, setting forth the requirements for identifying correspondence relating to trademark applications and registrations. This is consistent with current § 1.5.

The Office is adding a new § 2.195, setting forth the procedures for according filing dates in trademark cases. This is consistent with current § 1.6.

The Office is adding a new § 2.196, providing that when the last day for taking an action or paying a fee falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken or fee may be paid on the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with current § 1.7.

The Office is adding a new § 2.197, setting forth the requirements and procedures for filing a document under a certificate of mailing or certificate of transmission. This is consistent with current § 1.8.

Section 2.197(b) requires that if correspondence is timely mailed or transmitted, but not received in the Office, the party who filed the correspondence must inform the Office of the timely mailing or transmission within two months after becoming aware that the Office has no evidence of receipt of the correspondence. This does not change current practice. While current § 1.8(b)(1) requires that the party inform the Office of the timely mailing or transmission ''promptly,'' § 2.146(d) requires that a petition for revival or reinstatement in a trademark case be filed within two months of the date that the party who filed the correspondence became aware that there was a problem with the filing date of the correspondence, unless a different deadline is specified elsewhere in the rules. Trademark Manual of Examining Procedure §§ 305.02(f), 306.05(d) and 1705.04.

The Office is adding a new § 2.198, setting forth the procedures and requirements for filing correspondence by Express Mail. This is consistent with current § 1.10. Section 2.198(a)(1) provides that the Express Mail procedure cannot be used to file: Trademark applications filed under section 1 or section 44 of the Trademark Act; amendments to allege use under section 1(c) of the Trademark Act; statements of use under section 1(d) of the Trademark Act; requests for extension of time to file a statement of use under section 1(d) of the Trademark Act; affidavits of continued use under section 8 of the Trademark Act; renewal applications under section 9 of the Trademark Act, 15 U.S.C. § 1059; requests to change or correct addresses; combined filings under sections 8 and 9 of the Trademark Act; or combined affidavits or declarations under sections 8 and 15 of the Trademark Act.

Sections 2.198(c)(1), (d)(1) and (e)(1) require that if correspondence is sent by Express Mail under §§ 2.198(a) and (b) but not accorded a filing date as of the date of deposit with the United States Postal Service (USPS), the party who filed the correspondence may petition for a filing date as of the date of deposit with the USPS, within two months after becoming aware that the Office did not receive the correspondence, or that the Office accorded an incorrect filing date to the correspondence. This does not change current practice. While current § 1.10(c)(1), (d)(1) and (e)(1) require that the party inform the Office of the timely mailing or transmission ''promptly,'' § 2.146(d) requires that a petition for revival or reinstatement in a trademark case be filed within two months of the date that the party who filed the correspondence became aware that there was a problem with the filing date of the correspondence, unless a different deadline is specified elsewhere in the rules. Trademark Manual of Examining Procedure §§ 305.03 and 1705.04.

The Office is adding a new § 2.200, setting forth the procedures for requesting copies of trademark assignments. This is consistent with current § 1.12.

The Office is adding a new § 2.201, setting forth the procedures for requesting copies of trademark registrations. This is consistent with current § 1.13.

The Office is adding a new § 2.206, providing that trademark fees must be paid in advance and must be itemized. This is consistent with current § 1.22.

The Office is adding a new § 2.207, setting forth the methods for paying fees in trademark cases. This is consistent with current § 1.23.

The Office is adding a new § 2.208, providing for the payment of trademark fees from deposit accounts. This is consistent with current § 1.25.

The Office is adding a new § 2.209, setting forth the procedures for refunding trademark fees. This is consistent with current § 1.26.

Rule Making Requirements

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. See 5 U.S.C. 603.

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 not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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.

Administrative Procedure Act: This final rule merely renumbers rules of agency practice and procedure. There are no substantive changes to the rules. Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

■ For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the Office is amending parts 1 and 2 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2).

■ 2. Amend § 1.1 by revising the section heading, removing and reserving paragraph (a)(2), and revising paragraphs (a) introductory text and (a)(4) and removing the note following paragraph (f) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except as provided in paragraphs (a)(3)(i), (a)(3)(ii) and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either ''Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450'' or to specific areas within the Office as set out in paragraphs (a)(1) and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(4) *Office of Public Records correspondence.* (i) *Assignments.* All patent-related documents to be recorded by the Assignment Services Division, except for documents filed together with a new application or under § 3.81 of this chapter, should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. See § 3.27.

(ii) *Documents.* All requests for certified or uncertified copies of patent documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

■ 3. Amend § 1.4 by removing and reserving paragraph (d)(1)(iii), and by revising paragraphs (a)(1), (a)(2), (b), (d)(1) introductory text, and (d)(1)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(1) Correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents, orders for copies of records, transmission of assignments for recording, and the like, and

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the

filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of ex parte reexaminations of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; and of inter partes reexaminations of patents in subpart H, §§ 1.902 to 1.997.

(b) Since each file must be complete in itself, a separate copy of every paper to be filed in a patent application, patent file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, or other proceeding.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

* * * * *

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

* * * * *

■ 4. Amend § 1.5 by removing and reserving paragraph (c) and revising the section heading to read as follows.

§ 1.5 Identification of patent, patent application, or patent-related proceeding.

* * * * *

■ 5. Amend § 1.6 by removing and reserving paragraphs (a)(4), (d)(7) and (d)(8), and revising paragraphs (d) introductory text, (d)(3), and (d)(4) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) *Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the United States Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. *See* § 1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the United States Patent and Trademark Office. The application number of a patent application, the control number of a reexamination proceeding, the interference number of an interference proceeding, or the patent number of a patent should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

* * * * *

(3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

(4) Drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, or 1.437;

* * * * *

§ 1.8 [Amended]

■ 6. Amend § 1.8 by removing and reserving paragraph (a)(2)(ii).

■ 7. Amend § 1.10 by revising paragraph (a)(1) to read as follows:

§ 1.10 Filing of correspondence by ''Express Mail.''

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

* * * * *

■ 8. Amend § 1.12 by revising paragraph (a) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the United States Patent and Trademark Office for patents and trademarks. The assignment records, relating to original or reissue patents, including digests and indexes (for assignments recorded on or after May 1, 1957), and published patent applications, are open to public inspection at the United States Patent and Trademark Office, and copies of patent assignment records may be obtained upon request and payment of the fee set forth in § 1.19 of this chapter. See § 2.200 of this chapter regarding trademark assignment records.

(2) All records of assignments of patents recorded before May 1, 1957, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA.

* * * * *

■ 9. Revise § 1.13 to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents, and patent application publications and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public, will be furnished by the United States Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the appropriate fee. See § 2.201 of this chapter regarding copies of trademark records.

(b) Certified copies of patents, patent application publications, and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name attested by an officer of the United States Patent and Trademark Office authorized by the Director, upon payment of the fee for the certified copy.

■ 10. Revise § 1.22 to read as follows:

§ 1.22 Fees payable in advance.

(a) Patent fees and charges payable to the United States Patent and Trademark Office are required to be paid in advance; that is, at the time of requesting any action by the Office for which a fee or charge is payable, with the exception that under § 1.53 applications for patent may be assigned a filing date without payment of the basic filing fee.

(b) All fees paid to the United States Patent and Trademark Office must be itemized in each individual application, patent, or other proceeding in such a manner that it is clear for which purpose the fees are paid. The Office may return fees that are not itemized as required by this paragraph. The provisions of § 1.5(a) do not apply to the

resubmission of fees returned pursuant to this paragraph.

■ 11. Amend § 1.26 by revising paragraph (a) to read as follows:

§ 1.26 Refunds.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 12. The authority citation for 37 CFR Part 2 is revised to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2, unless otherwise noted.

§ 2.1 [Removed and Reserved]

■ 13. Remove and reserve § 2.1.

■ 14. Amend § 2.2 to add new paragraphs (c) through (f).

§ 2.2 Definitions.

* * * * *

(c) *Director* as used in this chapter, except for part 10, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(d) *Federal holiday within the District of Columbia* means any day, except Saturdays and Sundays, when the United States Patent and Trademark Office is officially closed for business for the entire day.

(e) The term *Office* means the United States Patent and Trademark Office.

(f) The acronym *TEAS* means the Trademark Electronic Application System, available online at *http://www.uspto.gov.*

■ 15. Amend § 2.6 by adding new paragraphs (b)(12) and (b)(13), to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) * * *

(12) For processing each payment refused (including a check returned ''unpaid'') or charged back by a financial institution—$50.00

(13) Deposit accounts:

(i) For establishing a deposit account—$10.00

(ii) Service charge for each month when the balance at the end of the month is below $1,000–$25.00

■ 16. Revise § 2.123(f)(2) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

* * * * *

(f) * * *

(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing. The officer or the party taking the deposition, or its attorney or other authorized representative, shall then promptly forward the package to the address set out in § 2.190. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted by the officer or the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section.

* * * * *

■ 17. Immediately after § 2.186, add the following new center heading to read as follows:

General Information and Correspondence in Trademark Cases

■ 18. Add §§2.188 through 2.198 to read as follows:

§ 2.188 [Reserved]

§ 2.189 [Reserved]

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Trademark correspondence—in general.* All trademark-related documents filed on paper, except documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents, should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

(b) *Electronic trademark documents.* An applicant may transmit a trademark document through TEAS, at *http://www.uspto.gov.*

(c) *Trademark assignments.* Requests to record documents in the Assignment Services Division may be filed through the Office's web site, at *http://www.uspto.gov.* Paper documents and cover sheets to be recorded in the Assignment Services Division should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. See § 3.27 of this chapter.

(d) *Requests for copies of trademark documents.* Copies of trademark documents can be ordered through the Office's web site at *www.uspto.gov.* Paper requests for certified or uncertified copies of trademark documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

§ 2.191 Business to be transacted in writing.

All business with the Office should be transacted in writing. The personal appearance of applicants or their representatives at the Office is unnecessary. The action of the Office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The Office encourages parties to file documents through TEAS wherever possible.

§ 2.192 Business to be conducted with decorum and courtesy.

Trademark applicants, registrants, and parties to proceedings before the Trademark Trial and Appeal Board and their attorneys or agents are required to conduct their business with decorum and courtesy. Documents presented in violation of this requirement will be submitted to the Director and will be returned by the Director's direct order. Complaints against trademark examining attorneys and other employees must be made in correspondence separate from other documents.

§ 2.193 Trademark correspondence and signature requirements.

(a) Since each file must be complete in itself, a separate copy of every

document to be filed in a trademark application, trademark registration file, or proceeding before the Trademark Trial and Appeal Board must be furnished for each file to which the document pertains, even though the contents of the documents filed in two or more files may be identical. Parties should not file duplicate copies of correspondence, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

(b) Since different matters may be considered by different branches or sections of the Office, each distinct subject, inquiry or order must be contained in a separate document to avoid confusion and delay in answering correspondence dealing with different subjects.

(c)(1) Each piece of correspondence that requires a person's signature, must:

(i) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(ii) Be a copy, such as a photocopy or facsimile transmission (§ 2.195(c)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted or required, the person who signs the filing must either:

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; or

(B) Sign the verified statement using some other form of electronic signature specified by the Director.

(2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15).

(d) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

§ 2.194 Identification of trademark application or registration.

(a) No correspondence relating to a trademark application should be filed prior to receipt of the application serial number.

(b) (1) A letter about a trademark application should identify the serial number, the name of the applicant, and the mark.

(2) A letter about a registered trademark should identify the registration number, the name of the registrant, and the mark.

§ 2.195 Receipt of trademark correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Trademark correspondence received in the Office is given a filing date as of the date of receipt except as follows:

(1) The Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted electronically under paragraph (a)(2) of this section or transmitted by facsimile under paragraph (a)(3) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

(2) Trademark-related correspondence transmitted electronically will be given a filing date as of the date on which the Office receives the transmission.

(3) Correspondence transmitted by facsimile will be given a filing date as of the date on which the complete transmission is received in the Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date will be the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(4) Correspondence filed in accordance with § 2.198 will be given a filing date as of the date of deposit as ''Express Mail'' with the United States Postal Service.

(b) *Correspondence delivered by hand.* In addition to being mailed, correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(c) *Facsimile transmission.* Except in the cases enumerated in paragraph (d) of this section, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 2.196. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application, registration or proceeding before the Office. The application serial number, registration number, or proceeding number should be entered as a part of the sender's identification on a facsimile cover sheet.

(d) Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

(1) Applications for registration of marks;

(2) Drawings submitted under § 2.51, § 2.52, § 2.72, or § 2.173;

(3) Correspondence to be filed with the Trademark Trial and Appeal Board, except notices of ex parte appeal; and

(4) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act; and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act.

(e) *Interruptions in U.S. Postal Service.* If interruptions or emergencies in the United States Postal Service which have been so designated by the Director occur, the Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

§ 2.196 Times for taking action: Expiration on Saturday, Sunday or Federal holiday.

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by regulation under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday.

§ 2.197 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with § 2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to the filing of a trademark application.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed.

§ 2.198 Filing of correspondence by ''Express Mail.''

(a)(1) Except for documents listed in paragraphs (a)(1)(i) and (ii) of this section, any correspondence received by the Office that was delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) will be considered filed with the Office on the date of deposit with the USPS. The Express Mail procedure does not apply to:

(i) Applications for registration of marks;

(ii) Amendments to allege use under section 1(c) of the Act;

(iii) Statements of use under section 1(d) of the Act;

(iv) Requests for extension of time to file a statement of use under section 1(d) of the Act;

(v) Affidavits of continued use under section 8 of the Act;

(vi) Renewal requests under section 9 of the Act; and

(vii) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the ''date in'' on the ''Express Mail'' label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the date of receipt in the Office as the filing date.

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the ''Express Mail'' mailing label with the ''date-in'' clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an ''Express Mail'' drop box) do so at the risk of not receiving a copy of the ''Express Mail'' mailing label with the desired ''date-in'' clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the ''Express Mail'' mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the ''Express Mail Post Office to Addressee'' service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing; and

(3) The petition includes a true copy of the ''Express Mail'' mailing label showing the ''date-in,'' and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the ''Express Mail Post Office to Addressee'' service of the USPS, who can show that the ''date-in'' on the ''Express Mail'' mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) prior to the original mailing; and

(3) The petition includes a showing that establishes, to the satisfaction of the Director, that the correspondence was deposited in the ''Express Mail Post Office to Addressee'' service prior to the last scheduled pickup on the requested filing date. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or evidence that came into being within one business day after the deposit of the correspondence in the ''Express Mail Post Office to Addressee'' service of the USPS.

(e) If correspondence is properly addressed to the Office pursuant to § 2.190 and deposited with sufficient postage in the ''Express Mail Post Office to Addressee'' service of the USPS, but not received by the Office, the party who mailed the correspondence may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) prior to the original mailing;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) showing the number of the ''Express Mail'' mailing label thereon, a copy of any returned postcard receipt, a copy of the ''Express Mail'' mailing label showing the ''date-in,'' a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the ''date-in'' on the ''Express Mail'' mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the correspondence was deposited in the ''Express Mail Post Office to Addressee'' service prior to the last scheduled pickup on the requested filing date; and

(4) The petition includes a statement that establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the ''Express Mail'' mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original ''Express Mail'' mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine whether the correspondence was deposited as ''Express Mail'' with the USPS on the date in question.

■ 19. Add a new center heading and §§2.200 and 2.201 to read as follows:

Trademark Records and Files of the Patent and Trademark Office

§ 2.200 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the Office for patents and trademarks. The assignment records relating to trademark applications and registrations (for assignments recorded on or after January 1, 1955) are open to public inspection at the Office, and copies of those assignment records may be obtained upon request and payment of the fee set forth in § 2.6 of this chapter.

(2) All records of trademark assignments recorded before January 1, 1955, are maintained by the National Archives and Records Administration (NARA). The records are open to public inspection. Certified and uncertified copies of those assignment records are provided by NARA upon request and payment of the fees required by NARA.

(b) An order for a copy of an assignment or other document should identify the reel and frame number where the assignment or document is recorded. If a document is identified without specifying its correct reel and frame, an extra charge as set forth in § 2.6(b)(10) will be made for the time consumed in making a search for such assignment.

§ 2.201 Copies and certified copies.

(a) Non-certified copies of trademark registrations and of any trademark records or trademark documents within the jurisdiction of the Office and open to the public, will be furnished by the Office to any person entitled thereto, upon payment of the appropriate fee required by § 2.6.

(b) Certified copies of trademark registrations and of any trademark records or trademark documents within the jurisdiction of the Office and open to the public will be authenticated by the seal of the Office and certified by the Director, or in his or her name attested by an officer of the Office authorized by the Director, upon payment of the fee required by § 2.6.

■ 20. Add a new center heading and §§2.206 through 2.209 to read as follows:

Fees and Payment of Money in Trademark Cases

§ 2.206 Trademark fees payable in advance.

(a) Trademark fees and charges payable to the Office are required to be paid in advance; that is, at the time of requesting any action by the Office for which a fee or charge is payable.

(b) All fees paid to the Office must be itemized in each individual trademark application or registration file, or trademark proceeding, so that the purpose for which the fees are paid is clear. The Office may return fees that are not itemized as required by this paragraph.

§ 2.207 Methods of payment.

(a) All payments of money required in trademark cases, including fees for the processing of international trademark applications and registrations that are paid through the Office, shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for trademark fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

§ 2.208 Deposit accounts.

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering copies of records, or services offered by the Office, deposit accounts may be established in the Office upon payment of the fee for establishing a deposit account (§ 2.6(b)(13)). A minimum deposit of $1,000 is required for paying any fees due or in ordering any services offered by the Office. The Office will issue a deposit account statement at the end of each month. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, copies, or services requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§ 2.6(b)(13)) will be assessed for each month that the balance at the end of the month is below $1,000.

(b) A general authorization to charge all fees, or only certain fees to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular document filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

(c) A deposit account holder may replenish the deposit account by submitting a payment to the Office. A payment to replenish a deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by credit card or electronic funds transfer over the Office's Internet Web site (*http://www.uspto.gov*).

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, Suite 307, 2011 Crystal Drive, Arlington, Virginia 22202.

§ 2.209 Refunds.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a trademark application, appeal or other trademark filing for which a fee was paid, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph. If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 2.208(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

Dated: August 5, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–20489 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–16–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–1; Order No. 1380]

Additional Filing Requirements

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This document adopts, essentially as proposed, a rule that requires the Postal Service to provide overview testimony. The testimony must discuss how other testimony in a case interrelates and identify material changes affecting cost attribution, volume projections and rate design. This additional explanation and detail will assist the Commission and case participants in more readily understanding complex filings without unduly burdening the Postal Service.

DATES: This rule takes effect October 1, 2003.

ADDRESSES: Submit correspondence concerning this document to Steven W. Williams, Secretary of the Commission, via the Commission's electronic Filing Online system.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

See 67 FR 79538 (12/30/2002).

Introduction

In order no. 1355, the Commission proposed to amend its rules of practice in two principal ways.[1] First, the proposed rulemaking would require the Postal Service to submit testimony of a single witness providing an overview (or roadmap) of its request, which, among other things, would both explain the interrelationship of the testimony submitted in support of the filing and highlight all methodological changes. *See* proposed rule 53(b). Second, the rules would be clarified regarding the Postal Service's obligation to submit testimony addressing material methodological changes affecting costing, volume projections, or rate design. See proposed rules 53(c) and 54(a). Interested persons were invited to comment on the proposed rules.

Six sets of initial comments were received,[2] plus four sets of reply comments.[3] Aside from the Postal Service, all initial commenters supported the proposed rule. For its part, the Postal Service, while expressing concerns about the proposed rule changes, characterizes itself as ''generally sympathetic to the proclaimed need for a better overview of its case[.]'' [4]

Its principal concern lay with the form of the roadmap, favoring an institutional document over testimony. *Id.* at 3–6. To that end, the Postal Service offers an alternative version of the proposed rules. It also outlines its concept of the roadmap document as well as expressing concerns regarding the details associated with reporting methodological changes. *Id.* at 6–25.

Other commenters also suggest revisions to the proposed rule. For example, OCA suggests that the Postal Service be required to quantify the impact of every methodological change. In a similar vein, ABA/NAPM urge the Commission to quantify the meaning of material changes. See OCA Comments at 3–6 and ABA/NAPM Comments at 2. UPS suggests revisions to the proposed rules regarding details reported by the Postal Service. UPS Comments at 4.

This rulemaking grew out of the Ratemaking Summit, jointly sponsored by the Commission and the Postal

[1] See Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, PRC Order No. 1355, December 13, 2002.

[2] *See* Comments of Alliance of Nonprofit Mailers, American Business Media, AOL Time Warner, Inc., Dow Jones & Company, Inc., Magazine Publishers of America, Inc., The McGraw-Hill Companies, and National Newspaper Association, February 12, 2003, (Joint Comments); Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 12, 2003, (ABA/NAPM Comments); Comments of American Postal Workers Union, AFL-CIO Regarding Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, January 15, 2003, (APWU Comments); Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 12, 2003, (OCA Comments); Comments of United Parcel Service in Support of Proposed Rule, February 11, 2003, (UPS Comments); and Initial Comments of the United States Postal Service, February 12, 2003, (Postal Service Comments).

[3] See Letter on Behalf of American Bankers Association and National Association of Presort Mailers, February 26, 2003, (ABA/NAPM Reply Comments); Office of the Consumer Advocate Reply Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes, February 26, 2003, (OCA Reply Comments); Reply Comments of PostCom, February 20, 2003; (PostCom Reply Comments); and Reply Comments of the United States Postal Service, February 26, 2003, (Postal Service Reply Comments).

[4] Postal Service Comments at 1.

Service during the spring of 2002 to consider potential improvements in the ratemaking process. The conferences provided a useful public forum to discuss various alternatives intended to make the current process more efficient. In order no. 1355, the Commission addressed the alternatives suggested. Based on participants' written and oral comments, the Commission proposed to amend its rules of practice to require that the Postal Service file roadmap testimony as well as testimony explaining each material methodological change in its filing when submitting formal requests under subparts B and C of the Commission's rules.

The proposed rule is widely supported by mailer-participants, and the OCA. The Postal Service opposes the form of the proposed rule, if not (entirely) its substance. Among other things, the Postal Service expresses concern over any burden that may be associated with the proposed rule. In concluding that the proposed rule, with a minor modification, will facilitate the ratemaking process, the Commission has been particularly mindful of the relative burdens borne by all participants during omnibus rate proceedings. Based on a thorough consideration of the comments received in this proceeding, the Commission concludes that the rules adopted herein represent a reasonable balance among competing interests and will improve the ratemaking process.

Participants are commended for their comments. The Commission has found them useful during its deliberations. The merit of the various suggestions to modify the proposed rule is addressed below. The discussion begins with consideration of the Postal Service's comments.

1. Postal Service Comments

Roadmap testimony. The Postal Service offers several reasons in support of its contention that the roadmap would be more effective as an institutional document than as testimony. As the ''most obvious reason,'' it questions whether an individual could be sufficiently familiar with the various testimonies to be able to explain them and their interrelationship. Even if such a witness were available, the Postal Service questions the usefulness of the undertaking, including the need to respond to discovery and possibly stand cross-examination. Expanding on this point, the Postal Service expresses concern that there may be confusion as to the proper scope of the roadmap testimony and that of the substantive witnesses, and further that there may be an increased need to redirect questions among witnesses.[5]

An additional concern voiced by the Postal Service is that a witness would be required to present evidence regarding Commission methodologies. This result, the Postal Service contends, would be inappropriate since the witness would not be sponsoring the PRC version. [6]

The Commission is not persuaded that an institutional roadmap is preferable to testimony. For several reasons, testimony, as opposed to an institutional document, is a more appropriate vehicle for providing an overview of the Postal Service's filing.

A witness is directly responsible for the substance of his or her testimony. Thus, there is a direct accountability that does not attach to an institutional roadmap. Form in this instance matters. Testimony from a single witness is more likely to present the Postal Service's filing as a coherent whole. Furthermore, discovery can be directed to the roadmap witness, an option not available if the roadmap were an institutional document.[7]

Requiring the roadmap to be in the form of testimony does not mean that the witness could not rely on others for assistance in producing the testimony. Rather, as with any testimony, it must be prepared by or under the supervision of the sponsoring witness. This should put to rest any concerns that a single witness would be unable to understand the elements of the Postal Service's filing. Moreover, that an institutional document could be produced belies the suggestion that an individual would be incapable of providing the same information in the form of testimony.

Testimony by a roadmap witness is analogous to that of a policy witness. Each speaks on behalf of the proponent, providing a focal point for its proposal. Thus, including the roadmap testimony as part of the evidentiary record is appropriate. The Postal Service compares the testimony to documents such as the list of library references or of the attorney-witness assignments.[8] Unlike those documents, which simply identify certain organizational features of the filing, the testimony has substantive value that warrants its treatment as record evidence.

Streamlining the administrative process is central to the proposed rule. The roadmap testimony is intended to provide an overview of the Postal Service's filing by, among other things, explaining the interrelationship of the testimony submitted with the request and describing material methodological changes. This testimony is likely to be the participants' starting point in attempting to understand the Postal Service's filing. Participants will benefit because the testimony will provide a means to quickly grasp the essential elements of the Postal Service's filing and focus on issues of principal concern. This should produce a more focused and comprehensive evidentiary record in the limited time available for § 3624 cases and lead to more informed and cogent decisions by the Commission. Being able to direct clarifying questions to the roadmap witness should facilitate the process, and questions going to the substance of particular matters should more readily be addressed to the witness sponsoring that proposal.[9]

In its comments, the Postal Service notes that it has and is willing to make reasonable efforts to better explain its rate case presentations.[10] In any rate proceeding, the burden initially lies with the proponent. The Commission is sensitive to the issue and recognizes the Postal Service's considerable efforts in rate cases, particularly as relates to discovery. Omnibus rate cases are complex and subject to a very expedited schedule. As a consequence, the burdens imposed on participants are not insignificant. The roadmap testimony attempts to reasonably balance these relative burdens, while also facilitating the ratemaking process. As several comments note, the testimony should help participants focus more quickly on substantive issues.[11] This, in turn, should reduce the Postal Service's burden of responding to discovery, particularly that of an exploratory nature. These efficiencies will redound to the benefit of all stakeholders.

The Postal Service's related contentions that participants may be confused about the scope of the roadmap testimony and that this may cause them to direct interrogatories to

[5] Postal Service Comments at 4.

[6] *Id.* at 5. In its comments, APWU also asserts that the roadmap might best be an institutional document, as some information may be beyond the witness's ken. APWU also expresses concern that roadmap testimony would be subject to discovery and possible oral cross-examination. In urging the use of an institutional roadmap, APWU advocates using informal discovery to clarify matters related to the roadmap. APWU Comments at 1. In its reply comments, PostCom also endorses the Postal Service's position. PostCom Reply Comments at 1.

[7] Questions to the roadmap witness should be of a ''where'' or ''who'' nature. Questions of a ''why'' or ''how'' nature should be directed to subject matter witnesses.

[8] Postal Service Comments at 6.

[9] In terms of discovery, roadmap testimony should not be perceived as something more than is intended. Participants should endeavor to address interrogatories concerning the substantive aspects of the matter to the appropriate witness.

[10] Postal Service Comments at 2.

[11] *See* Joint Comments at 2; UPS Comments at 2.

the wrong witness are largely makeweights. As set forth in the proposed rule, the roadmap testimony simply provides an overview of the Postal Service's filing. Participants are unlikely to confuse that purpose with the role played by witnesses sponsoring the more substantive aspects of the testimony on point. However, even if on occasion an interrogatory is directed to the wrong witness, the solution is simple. The Postal Service is well practiced at redirecting interrogatories to the appropriate witness, and the roadmap witness should be especially familiar with which witness addresses a particular topic. Hence, the Postal Service's argument provides no basis to reject the roadmap testimony.

The Postal Service expresses concern that the roadmap witness would, in effect, be sponsoring testimony regarding PRC methodologies when addressing material changes to the preexisting PRC versions proposed by the Postal Service in that proceeding.[12] The comparison required by this exercise cannot be equated with sponsoring the preexisting methodology. It merely identifies and gives context to the proposed change, serving as a benchmark so that the impact can be assessed. Testimony by the roadmap witness describes the areas of change. This does not amount to sponsoring the preexisting methodology. Similarly, witnesses submitting testimony under rule 53(c) sponsor the proposed methodological changes, not the preexisting methodology. That they may be compelled to reference the preexisting methodology does not mean they are sponsoring it.[13]

Interrelationships among testimonies. The Postal Service suggests the format and level of detail that would, in its view, satisfy the intent of the proposed rule to provide an overview of its filing.[14] For example, the Postal Service states that a roadmap explaining the functional components of the case, including identifying testimonies that addressed each component, would appear to provide a sufficient overview of its filing in conformance with the proposed rule, except as relates to methodological changes.[15] While it states that one might quibble over whether such a document would adequately explain how the testimonies interrelate, it believes that ''the description of the functional organization of the filing would encapsulate the informational flows that define the interrelationships [among] the testimonies.'' [16] Further, it indicates that it would have no difficulty summarizing sources of material inputs, including outputs used as inputs, employed by its various witnesses.[17]

In order no. 1355, the Commission, illustratively citing the testimony of witness Van-Ty-Smith in docket no. R2001–1, observed that she briefly notes that certain witnesses use her mail processing volume-variable costs. The order concludes that ''something more'' would be required of the roadmap witness.[18]

Quoting an excerpt from Van-Ty-Smith's testimony, the Postal Service questions what more would be required of it to satisfy this facet of the proposed rule.[19] Order no. 1355, as pointed out by the OCA, expands on the statement: [20] ''Specifically, the roadmap witness's overview of the Postal Service's filing would identify the subject matter of each witness's testimony, explain how the testimony of the various witnesses interrelates, and highlight changes in cost methodology, volume estimation and rate design.'' See proposed § 3001.53(b). Thus, with reference to Van-Ty-Smith's testimony, the roadmap witness would, among other things, explain the linkage between her analysis and the testimony of those witnesses who rely on it.

The roadmap testimony should provide a coherent overview of the Postal Service's filing. To be sure, the excerpt from Van-Ty-Smith's testimony does identify some interrelationship between her testimony and that of other witnesses. Certain interrelationships are reasonably clear, *e.g.,* the description regarding witness Kay's development of incremental costs and Meehan's base year costs. It is less clear, however, regarding the ''updates [of] other types of information coming out of the methodology for mail processing costs which are used by other witnesses, such as [Smith, Mayes, Eggleston, and Miller], as the source of inputs for some of their cost studies.'' [21] While the statement would alert the reader that some relationship exists between Van-Ty-Smith's and the referenced testimony, it lacks specifics other than a general reference to cost studies. Moreover, the statement is somewhat qualified, referring to witnesses ''such as'' Smith, *et al.,* and that the inputs are used in ''some of their cost studies.'' [22]

As written, that testimony falls short of explaining the linkage between Van-Ty-Smith's analysis and the testimony of those witnesses who rely on it. The Commission recognizes, of course, that the testimony was not written with the proposed rule in mind. Moreover, as the Postal Service suggests, the foregoing description might be sufficient ''[i]n the context of a comprehensive roadmap * * * because any potential questions with respect to the more specific purposes of, for example, the testimony of witness Miller, could be quickly resolved by other information within the roadmap document discussing Mr. Miller's cost study testimony.'' [23] Thus, if the linkages to Van-Ty-Smith's testimony are adequately detailed in the portion of the roadmap testimony that addresses, for example, witness Miller's testimony, the proposed rule would be satisfied.

The description in the roadmap testimony is not a surrogate for the underlying testimony of the witness referenced, *e.g.,* Miller's testimony in docket no. R2001–1, USPS–T–22. It should, however, be sufficiently detailed to explain linkages between the two testimonies. This does not mean that the roadmap testimony is to function as a cross-referencing vehicle. That function, as the Postal Service notes, is ''fulfilled by the complete documentation submitted by each witness.'' [24]

In sum, the roadmap testimony is intended to facilitate consideration of complex rate and classification requests by providing participants with an overview of the filing, including identifying changes in methodology. It should enable participants to focus more quickly on issues affecting rates (or service) of concern to them. The level of detail to be included in the roadmap testimony undoubtedly will evolve over time. Based on its comments, the Postal Service appears committed to making a good faith effort to comply with the rules. The Commission would expect no less and, based on experience, believes that Postal Service adheres to that standard in matters before the Commission.

Changes in methodology. Under the proposed rule, the roadmap testimony would highlight changes in cost methodology, volume estimation, and

[12] Postal Service Comments at 4–5.

[13] As the OCA notes, ''The Postal Service witness is obviously not deemed to be sponsoring the PRC version; only explaining how the Postal Service's presentation relates to the Commission's methodologies.'' OCA Reply Comments at 5.

[14] See Postal Service Comments at 6–12.

[15] *Id.* at 7–8.

[16] *Id.* at 8.

[17] *Ibid.*

[18] PRC Order No. 1355, December 12, 2002, at 7.

[19] Postal Service Comments at 7–8.

[20] PRC Order No. 1355, December 12, 2002, at 7–8.

[21] Postal Service Comments at 9, quoting USPS–T–13 at 1.

[22] *Ibid.*

[23] *Id.* at 9.

[24] *Id.* at 10.

rate design. In addition, the witness sponsoring the methodological changes would be required to explain each material change and quantify its impact. The Postal Service raises concerns about each.

First, the Postal Service states its assumptions regarding the term ''cost methodology,'' correctly noting that the term extends to subclass costs (CRA costs) and cost study costs.[25] The Postal Service then outlines what it characterizes as an appropriate response to address changes in cost methodology under proposed Rule 53(b) and (c). Under its suggested approach, the roadmap document would contain a summary of each witness's testimony, identifying material changes in cost methodology.[26] The summaries could include a comparison of results under the proposed methodology with those obtained under that used by the Commission in the most recent rate proceeding. Generally, such comparisons would simply present the relevant material from PRC-version library references along with the results of the witness sponsoring the change.[27]

If the roadmap were an institutional document perhaps the foregoing would be satisfactory. That approach, however, has been rejected. Moreover, under the Postal Service's proposal, any distinctions between rule 53(b) and (c) are lost. The distinctions are not insignificant.

Perhaps because it would prefer the roadmap be an institutional document, the Postal Service pays scant attention to proposed rule 53(c), suggesting that the rule be revised in two ways. The Postal Service proposes that any discussion of the impact of material changes be removed to its proposed rule 53(b), the institutional roadmap document.[28] In addition, because of its concern over sponsoring PRC versions, the Postal Service suggests modifying proposed rule 53(c) to eliminate any reference to the Commission.[29]

These suggested revisions reflect the Postal Service's preference for an institutional roadmap document in lieu of testimony. Since that approach has been rejected, these suggestions will not be adopted. Accordingly, the Commission will adopt rule 53(c) as initially proposed.

Proposed rule 53(b) requires the filing of a single piece of testimony providing an overview of the request, including, among other things, highlighting methodological changes. Proposed rule 53(c) directs the Postal Service to file testimony addressing the details of material methodological changes, including the impact of such changes. The rule assures that testimony will be filed by a witness sponsoring and explaining each relevant methodological change.

Aside from reiterating its advocacy of an institutional roadmap document in lieu of testimony, the Postal Service, in a rather extensive discussion, compares the proposed rule to what is required under current rule 54(a).[30] The discussion is useful to the extent it points out that, as a practical matter, judgment must be exercised in reporting on various types of changes, *e.g.,* those due to updates, operational changes, or new analytical approaches. In the context of current rule 54(a), the Postal Service indicates that it has attempted ''to employ a rule of reason'' in responding to the requirements of that rule.[31] The larger point of the discussion, however, is concern that the proposed rule not undermine the Postal Service's ability to develop, support, and present its case.[32] This concern appears to be overstated. While the Commission is not adopting the Postal Service's suggestion that the roadmap take the form of an institutional document, the end result nonetheless strikes a reasonable balance between competing interests. The roadmap testimony will facilitate litigation of Postal Service rate requests without significantly increasing burdens borne by the Postal Service. Moreover, should they not work as intended, the rules may be revisited in the future.

Second, the Postal Service expresses a preference for eliminating any discussion of volume forecasting from the roadmap, arguing, for example, that the issue is uncontroversial and that there are no appreciable differences between its approach to forecasting volume and the Commission's.[33] Nonetheless, the Postal Service does not foresee any major difficulties in complying, and this aspect of the proposed rule will be retained. While the volume estimates currently are perhaps less controversial than other rate issues, they remain important in determining an overall revenue requirement and methodological changes should be identified clearly at the outset of any rate proceeding.

Finally, the Postal Service addresses changes in rate design. It questions the need for any extensive discussion within the roadmap, finding it unlikely that any participant interested in rates for a particular subclass would not turn to the testimony of the relevant rate design witness. Thus, it suggests that the rule would be satisfied if the subclasses or services addressed by each rate design witness plus any material rate design changes were identified in the roadmap.[34]

Systems for developing rates for some subclasses rival the complexity of those used to develop costs, and changes may be difficult to identify easily. The Postal Service's interpretation might appear to be a reasonable first cut in complying with this facet of the proposed rule in some instances, but it should be borne in mind that the purpose of these amendments is to facilitate immediate awareness of changes and their impact. Rate design is an undeniably important ratemaking function. To the extent that the Postal Service proposes changes, whether as a classification change or part of its rate request, the discussion of rate design changes is part of the coherent whole that the roadmap testimony is designed to present. Whether the level of detail provided in the testimony is adequate or not can best be assessed after experience with the rule is gained. Thereafter, changes, if any, can be considered. It bears emphasizing, however, that the proposed rule attempts to strike a reasonable balance between the litigation burdens imposed on participants and the Postal Service. It makes more sense to specifically identify changes in one place than to assume that all intervenors can, without help, identify the testimony most relevant to their specific interest areas. In the Commission's view, the rules adopted will improve the process and thus benefit all concerned.

2. OCA Comments

In order no. 1355, the Commission stated that ''[p]ursuant to proposed rule 53(c), it would fall to the sponsoring witness to provide details of the change, including estimating (or quantifying) its effects.'' [35] The responsibility of the sponsoring witness is clear. The Commission recognized, however, that quantifying a material change was subject to some ambiguity. Accordingly, it invited interested parties to comment

[25] *Id.* at 13.

[26] *Id.* at 14.

[27] *Ibid.*

[28] *Id.* at 15–16.

[29] *Id.* at 16, n.6; see also attachment to Postal Service Comments.

[30] *Id.* at 16–20.

[31] *Id.* at 18, n.8.

[32] *Id.* at 19–20.

[33] *Id.* at 21.

[34] *Id.* at 24–25. The latter, the Postal Service observes, may cause the summaries of rate design testimonies to be more detailed than those for other witnesses. *Id.* at 25.

[35] PRC Order No. 1355, December 12, 2002, at 9.

on the benefits of imposing the requirement.

OCA urges the Commission to modify proposed rule 53(c) to make more explicit the requirement that the Postal Service quantify the impact of material changes in cost methodology, volume estimation, and rate design.[36] OCA contends that the proposed rule does not specifically require the Postal Service to quantify such effects, as, in its view, the text of order no. 1355 suggests is required. Thus, OCA suggests that proposed rule 53(c) employ specific language to require quantitative estimates of the impact of each methodological change. [37]

The Postal Service opposes this suggestion, asserting that the rule should not be altered to require quantification in all circumstances.[38] Reiterating its initial comments, the Postal Service states that, when comparisons between the PRC and Postal Service versions can be made, the most relevant type of quantification would be routinely provided in the roadmap document it envisions.[39] It asserts that in most instances parties will be interested in only the cumulative effect of the changes, particularly as relates to the roadmap document. The Postal Service also criticizes the suggestion as overlooking the extensive documentation that it files in support of its requests. The Postal Service concludes that its focus should be on the cumulative effects of new analyses, with participants free to investigate whatever components they believe to be most significant.[40]

To some degree, OCA and the Postal Service appear to be talking at cross-purposes. OCA's comments address proposed rule 53(c), which directs the Postal Service to file testimony addressing the details of material methodological changes, including the impact of such changes. For its part, however, the Postal Service's response is based on ''the roadmap document it envisions[,]'' [41] an approach, as noted, that ignores distinctions between proposed rules 53(b) and (c).

As proposed, rule 53(c) requires the Postal Service to submit testimony that identifies and explains each material change in cost methodology, volumes, and rate design. That testimony shall also discuss the impact of each such change on the levels of attributable costs, volumes, and rate levels. In order no. 1355, the Commission recognized that quantifying the effects of methodological changes may, in some instances, prove difficult. The Commission further noted that the proposed rules are not intended to require the Postal Service to address each change regardless of its consequences.

The Commission appreciates the OCA's comments. OCA's comments, however, gloss over any difficulties associated with quantifying interrelated methodological changes. OCA's suggestion that the Commission's rules be revised to require the Postal Service to quantify the impact of each separate methodological change overreaches. Furthermore, while OCA's basic point that the proposed rule does not hew explicitly to the discussion in order no. 1355 is not in dispute, the intent of the proposed rule is nonetheless reasonably clear.

As the Postal Service indicates, quantification becomes more difficult when several changes operate jointly.[42] To be sure, the cumulative effect of these changes is important. It remains to be seen whether parties will, for the most part, be interested only in the cumulative effect as the Postal Service contends. In any event, parties wanting more detail can avail themselves of discovery. Moreover, as the Postal Service notes, as part of its filing it provides comprehensive rate case documentation that permits replication of its analyses. Consequently, the Commission declines to adopt the OCA's suggestion.

The OCA also suggests that the rules be amended to bar institutional responses to interrogatories seeking to clarify a proponent's proposal(s) and evidence.[43] In support, OCA notes that responses to presiding officer information requests are sponsored by witnesses. In addition, OCA argues that timing may become an issue with written discovery.[44] The Postal Service opposes this suggestion, arguing, principally, that OCA fails to demonstrate that institutional responses have caused problems in recent dockets.[45]

The expedition required in omnibus rate cases puts a premium on attempting to quickly understand the Postal Service's filing. Written discovery is the principal means for clarifying the Postal Service's proposals. Informal discussions with the Postal Service and technical conferences may supplement this process. While timing can be an issue with respect to written discovery, cross-examination remains available to participants as well. The rationale offered by OCA for the suggestion does not warrant its adoption. It is well understood that participants submitting institutional responses to discovery requests must be prepared to provide a sponsoring witness if follow-up oral cross-examination is required. OCA has failed to demonstrate that institutional responses have caused participants problems in understanding the Postal Service's case in recent proceedings. Should it become a problem, however, the Commission's rules provide means for seeking redress.

OCA also proposes that the Commission should, as a matter of practice, formally notice in the **Federal Register** participants' alternative proposals in any case set for hearing.[46] OCA believes that such notice would apprise interested persons of any new proposals and preempt any due process claims that adequate notice was not given. No commenter addressed this suggestion.

The Commission declines to adopt this suggestion. OCA does not advocate codifying this practice in the Commission's rules.[47] Thus, for purposes of this rulemaking, the suggestion is essentially a nullity. The Commission could, were it so inclined, adopt the practice irrespective of this rulemaking. Moreover, as OCA notes, generally the original notice issued by the Commission is sufficient to apprise interested persons of the nature of the proceeding, including the possibility that its recommendations may differ from the Postal Service's request.

Finally, OCA incorporates its comments from docket no. RM2003–3 to the extent they may be more appropriately considered in this proceeding.[48] The Commission finds those comments more relevant to docket no. RM2003–3.

3. UPS Comments

UPS proposes two modifications to the proposed rules. The Postal Service opposes both. First, UPS suggests revising rule 53(b) by substituting the

[36] OCA Comments at 2–4.

[37] *Id.* at 3. ABA/NAPM appear to raise a similar concern in their comments that the rule should require the Postal Service to identify situations when several small changes ''all going in the same direction'' have a material effect even if taken individually the changes may not. ABA/NAPM Comments at 2.

[38] Postal Service Reply Comments at 10.

[39] *Ibid.*

[40] *Id.* at 11.

[41] *Id.* at 10.

[42] *Id.* at 10.

[43] OCA Comments at 4–6. Alternatively, OCA would permit institutional responses provided a witness is identified at the time and is available to stand cross-examination should it be requested. *Id.* at 6.

[44] *Id.* at 5.

[45] Postal Service Reply Comments at 11–13.

[46] OCA Comments at 6–8.

[47] *Id.* at 8.

[48] *Ibid.*

word ''describing'' for ''highlighting.'' The intent of this proposal is to have the roadmap witness generally explain the change and the reason for it.[49] The Postal Service opposes the wording change. While acknowledging that the word describe may not be ''utterly inappropriate,'' contending that the use of ''highlighting'' better conveys the appropriate level of detail.[50]

The Commission adopts this UPS suggestion. On reflection, the term ''highlighting'' is perhaps too ambiguous in the context of the rule. The roadmap witness should describe changes in cost methodology, volume projections, and rate design in sufficient detail to inform the reader of the nature of the change.[51] This should adequately inform the reader of the change and direct him or her to the testimony of the witness sponsoring the proposed change, where the complete details of material methodological changes will be contained. In this fashion, the roadmap testimony will fulfill its intended role. Moreover, this clarifying change appears to be consistent with the Postal Service's understanding of the roadmap's function. Specifically, the Postal Service recognizes that the description of the changes must be sufficient to enable readers to understand the nature of the changes.[52]

Second, UPS suggests that rule 53(c) be modified by inserting the phrase ''for each affected subclass'' at the end of the final sentence to that subsection.[53] UPS states that its proposal is intended to make the intent of the proposed rule clear.[54] In opposing this suggestion, the Postal Service observes, first, that the effect of some changes cannot be presented at the subclass level. In support, it references a study done by witness Bozzo. Second, the Postal Service states that certain cost studies are done below the subclass level. Finally, the Postal Service asserts the change is unnecessary as it intends, where appropriate, to provide the impacts by subclass.[55]

The rule will be adopted as proposed. The testimony required by this subsection directs, first, that material changes in cost methodology, volume projections, and rate design be identified and explained. The intent of this provision is that the relevant witness explain each material change, which may affect the system as a whole or individual classes or subclasses of mail. Rule 53(c) also requires that the impact of each material change on the levels of attributable costs, projected volumes, and rate levels be discussed. The nature and impact of the change will dictate the form of the discussion. On occasion, it may involve the system as a whole. More often, however, the discussion of impacts is likely to be at the subclass level or below. The Postal Service appears to acknowledge this possibility with its comment that ''certain cost studies are done below the subclass level (*i.e.*, at the rate category level).'' [56]

The Postal Service's contention that the impact of certain changes cannot be presented at the subclass level warrants brief comment, albeit not for its substance. As support for its position, the Postal Service refers to witness Bozzo's analyses of mail processing cost pool variabilities, stating that his results did not relate directly to subclasses. The Postal Service notes that witness Van-Ty-Smith distributed mail processing costs to subclasses in the last proceeding.[57] While the Bozzo example may adequately answer UPS's suggestion, ambiguity may nonetheless persist as to Van-Ty-Smith's testimony. Under the proposed rule, it would fall to witness Van-Ty-Smith to discuss the impact of any material changes in the distribution of mail processing costs.

4. ABA/NAPM Comments

ABA/NAPM suggest that the Commission should quantify, perhaps by examples, what constitutes ''material effect.'' [58] While the phrase ''material effect'' appears in the text of order no. 1355 (at 9), it does not, as the Postal Service notes,[59] appear in the proposed rule. At that point in the text, the phrase is describing the responsibilities of the roadmap witness, which are set forth in proposed rule 53(b). The details of the change, however, are the responsibility of the witness sponsoring the change. See order no. 1355, December 12, 2002 at 9.

In urging the Commission to quantify ''material effect,'' ABA/NAPM focus on rate changes, noting that changes as small as a few hundreds of a cent are material to them.[60] Attempting to quantify ''material effect'' at the rate cell level, as the commenters appear to suggest, would be impractical and would impose an unwarranted burden on the Postal Service. The central issue is what is material, and that, as the Postal Service recognizes, may vary depending on the circumstances. Thus, while the Postal Service's observation that small rate changes may be material for one rate schedule but not another may adequately rebut ABA/NAPM's request for quantification, it also implies the standard of materiality that should govern its response to the rules. As the Postal Service recognizes, small changes, *e.g.*, tenths of a cent, might be material for certain rate schedules, *e.g.*, First-Class, Standard, but unlikely to be for others, *e.g.*, Express Mail, Priority Mail.[61] Accordingly, the issue of materiality fairly answers itself.

In order no. 1355, the Commission provided guidance concerning the types of changes that fall within the scope of the proposed rule.[62] In brief, as set forth in proposed rule 53(c), the ''intent is to capture substantive changes.'' [63] The Postal Service appears to understand the intent of the proposed rule. In opposing ABA/NAPM's suggestion, it states that in testimonies it routinely addresses methodological changes considered to be material.[64] The new rules should not impose substantial additional burden on the Postal Service. Inevitably, the rules will require the Postal Service to exercise some judgment. In its initial comments, the Postal Service indicates it employs a rule of reason when addressing the requirements of rule 54(a). When addressing the requirements of the new rules, the Postal Service would do well to bear that standard in mind. If in doubt, however, it should err on the side of noting the matter in the relevant testimony.

ABA/NAPM also request that the Commission require that the ''alternate cost presentation'' mandated by rule 54(a)(1) be sponsored by a Postal Service witness rather than simply being submitted as a library reference. ABA/NAPM indicate that sponsorship would be limited essentially to explaining the calculations.[65] The Postal Service opposes this suggestion.[66]

ABA/NAPM have not shown that the current format fails to provide

[49] UPS Comments at 4.

[50] Postal Service Reply Comments at 5.

[51] It will not be necessary for the roadmap witness to explain the reason for the change, provided that the sponsoring witness does.

[52] Postal Service Reply Comments at 5.

[53] UPS Comments at 5. Thus, as proposed, the sentence would read: ''The testimony required in this subsection (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels for each affected subclass.''

[54] *Ibid.*

[55] Postal Service Reply Comments at 5–6.

[56] *Id.* at 5.

[57] *Ibid.*

[58] ABA/NAPM Comments at 2.

[59] Postal Service Reply Comments at 6.

[60] ABA/NAPM Comments at 2.

[61] Postal Service Reply Comments at 6.

[62] PRC Order No. 1355, December 12, 2002 at 8–9.

[63] *Id.* at 8.

[64] Postal Service Reply Comments at 6.

[65] ABA/NAPM Comments at 3.

[66] Postal Service Reply Comments at 7–8.

participants with sufficient information about results under the PRC version to warrant requiring a Postal Service witness to sponsor the results. Institutional discovery and technical conferences remain available to participants. Accordingly, the suggestion will not be adopted at this time.

Finally, ABA/NAPM request that the Commission clarify that the proposed amendment to rule 54(a)(1) does not change the reporting requirements regarding attribution procedures, but rather that they will now be covered by rule 53(c).[67] The Commission clarifies that ABA/NAPM's understanding is correct.

Conclusion

For the reasons discussed above, the Commission hereby amends subparts B and C of its rules of practice and procedure as set forth below. Any suggestion or request to modify the Commission's rules raised by any participant not specifically addressed herein is denied.

It is ordered:

1. The Commission adopts the provisions set forth below as final rules amending 39 CFR 3001.53, 54, and 63.

2. These rules will take effect on October 1, 2003.

3. The Secretary shall cause this notice and order adopting final rule to be published in the **Federal Register**.

By the Commission.

Dated: August 7, 2003.

Garry J. Sikora,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

■ For the reasons stated in the accompanying order, the Commission adopts the following amendments to 39 CFR part 3001—Rules of Practice and Procedure Subpart B—Rules Applicable to Requests for Changes in Rates or Fees and Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3662, 3663.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

■ 2. Revise § 3001.53 to read as follows:

[67] ABA/NAPM Comments at 2–3.

§ 3001.53 Filing of prepared direct evidence.

(a) *General requirements.* Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) *Overview of filing.* As part of its direct evidence, the Postal Service shall include a single piece of testimony that provides an overview of its filing, including identifying the subject matter of each witness's testimony, explaining how the testimony of its witnesses interrelates, and describing changes in cost methodology, volume estimation, or rate design, as compared to the manner in which they were calculated by the Commission to develop recommended rates and fees in the most recent general rate proceeding. This testimony should also identify, with reference to the appropriate testimony, each witness responsible for addressing any methodological change described in paragraph (c) of this section.

(c) *Proposed changes.* As part of its direct evidence, the Postal Service shall submit testimony that identifies and explains each material change in cost methodology, volume estimation, or rate design, compared to the method employed by the Commission in the most recent general rate proceeding. This requirement shall not apply to any such change adopted by the Commission in an intervening proceeding. The testimony required in this paragraph (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels.

■ 3. In § 3001.54 paragraph (a)(1) is revised to read as follows:

§ 3001.54 Contents for formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in attribution principles.

* * * * *

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

■ 4. Revise § 3001.63 to read as follows:

§ 3001.63 Filing of prepared direct evidence.

(a) *General requirements.* Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) *Requests affecting more than one subclass.* Each formal request filed under this subpart affecting more than one subclass or special service is subject to the requirements of § 3001.53(b) and (c).

[FR Doc. 03–20566 Filed 8–12–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0180; FRL–7315–9]

Tralkoxydim; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tralkoxydim in or on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; wheat, straw. Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 1, 2005.

DATES: This regulation is effective August 13, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0180, must be received on or before October 14, 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: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 305 5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. of this preamble. 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–2003–0180. 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_40/40cf r180_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 March 21, 2003 (68 FR 13920–13924) (FRL–7295–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6F4631) by Sygenta Crop Protection, Inc, P.O. Box 18300, Greensboro, N.C, 27419–8300. This notice included a summary of the petition prepared by Syngenta Crop Protection, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.548 be amended by establishing a tolerance for residues of the herbicide tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino) propyl]-3-hydroxyl-5-(2,4,6-trimethylphenyl)-(9Cl), in or on barley, grain at 0.02 parts per million (ppm) ; barley, hay at 0.02 ppm; barley, straw at 0.05 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.02 ppm; and wheat, straw at 0.05 ppm. The tolerance will expire on May 1, 2005.

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 a tolerance for residues of tralkoxydim on barley, grain at 0.02 parts per million (ppm) ; barley, hay at 0.02 ppm; barley, straw at 0.05 ppm;

wheat, forage at 0.05 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.02 ppm; and wheat, straw at 0.05 ppm EPA's assessment of exposures and risks associated with establishing the tolerance was discussed in the **Federal Register** December 16, 1998 (63 FR 69194–69200) and will not be repeated in this notice.

IV. Conclusion

Therefore, the tolerance is established for residues of tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino) propyl]-3-hydroxyl-5-(2,4,6-trimethylphenyl)-(9Cl), in or on barley, grain at 0.02 ppm ; barley, hay at 0.02 ppm; barley, straw at 0.05 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.02 ppm; and wheat, straw at 0.05 ppm

Due to the second species carcinogenicity study data gap: EPA believes it is inappropriate to establish permanent tolerances for the uses of tralkoxydim at this time. EPA believes that the existing data support time-limited tolerances to May 1, 2005. Therefore, time-limited tolerances are established for residues of the herbicide, tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on the raw agricultural commodities: barley grain, barley hay, wheat grain and wheat hay at 0.02 ppm, and barley straw, wheat forage and wheat straw at 0.05 ppm. These time-limited tolerances will expire and be revoked on May 1, 2005.

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), 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–2003–0180. 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 October 14, 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–2003–0180., 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: July 31, 2003.

Debra Edwards,

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 180.548 is amended by revising the table to paragraph (a) to read as follows:

§ 180.548 Tralkoxydim; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Barley, grain	0.02	5/1/05
Barley, hay	0.02	5/1/05
Barley, straw	0.05	5/1/05
Wheat, forage	0.05	5/1/05
Wheat, grain	0.02	5/1/05
Wheat, hay	0.02	5/1/05
Wheat, straw	0.05	5/1/05

* * * * *

[FR Doc. 03–20433 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0251; FRL–7319–5]

Hydramethylnon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of hydramethylnon in or on pineapple. BASF requested this tolerance 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 August 13, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0251, must be received on or before October 14, 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: Richard J. Gebken, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6701; e-mail address: *gebken.richard@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)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Animal production (NAICS 112)

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–2003–0251 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 October 6, 1999 (64 FR Page 54300–54303) (FRL–6029–9), 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 (PP 2F02609) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. That notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.395 be amended by establishing a tolerance for residues of the insecticide Hydramethylnon in or on pineapple at 0.05 parts per million (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 a tolerance for residues of hydramethylnon on pineapple at 0.05 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 hydramethylnon 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	Subchronic Feeding - Rat	NOAEL = 2.5 mg/kg/day LOAEL = 5.0 mg/kg/day - decreased testicular weights (34%), and testicular atrophy.
870.3150	Subchronic Gavage - Dog	NOAEL = 3 mg/kg/day - LDT; decreased food consumption (11%/20%, males/females) and body weight gain (11%/9%, males/females). LOAEL = not defined Lethal Dose = 6 mg/kg/day - decreased food consumption and body weight gain, ↑SGPT, cachexia, wasting of muscle and subcutaneous fat, testicular atrophy, and death.
870.3150	Subchronic Gavage - Dog	NOAEL = 1.0 mg/kg/day LOAEL = 3.0 mg/kg/day - increased incidence of soft stools, mucoid stools, and diarrhea.
870.3200	21–Day Dermal - Rabbit	NOAEL = 250 mg/kg/day (HDT) Food consumption was depressed as much as 38% and 45% in the high-dose males and females, compared to controls. The high-dose males and females weighed as much as 8% and 9% less than the controls. The platelet count in the high-dose females at termination was 54% less than controls, but was not considered adverse because it is a common finding following skin abrasion.
870.3700	Developmental Toxicity - Rat	Maternal NOEL = 3 mg/kg/day Maternal NOAEL = 10 mg/kg/day - 8% decrease in body weight and yellowish discoloration of the fat. Maternal LOAEL = 30 mg/kg/day - 16% decrease in body weight; increased incidence of nasal mucus, alopecia, soft stools, staining of the anogenital fur, yellowish discoloration of the fat, and small thymus. Developmental NOEL = 10 mg/kg/day Developmental LOAEL = 30 mg/kg/day - decreased mean fetal weights and increased incidence of rudimentary structures and incompletely ossified supraoccipitals. At 30 mg/kg/day, a 16% decrease in maternal body weight, increased incidence of clinical signs (nasal mucus, alopecia, soft stool, staining of anogenital fur), yellowish discoloration of the fat, and small thymus were observed.
870.3700	Developmental Toxicity - Rabbit	Maternal NOAEL = 5 mg/kg/day - soft stools, and reduced amount of stools. Maternal LOAEL = 10 mg/kg/day - abortions, soft stools, reduced amount of stools, and anogenital matting and discharge. Developmental NOAEL = 5 mg/kg/day - decreased fetal weight (8%). Developmental LOAEL = 10 mg/kg/day - abortions, decreased fetal weight (16%).
870.3800	2-Generation Reproductive Toxicity - Rat	Reproductive/Systemic NOAEL = 25 ppm (1.66/2.01 mg/kg/day, male/female) Reproductive/Systemic LOAEL = 50 ppm (3.32 / 4.13 mg/kg/day, male/female) (degeneration of the germinal epithelium (1/29) and aspermia (1/29)
870.4100	Chronic Feeding Toxicity - Dog	*See* 870.3150
870.4200	Carcinogenicity Feeding - Mouse (18 months)	NOAEL = 25 ppm (3.57 mg/kg/day) in males NOAEL = not defined in females. LOAEL = 50 ppm (6.93 mg/kg/day) in males (testicular lesions) LOAEL = 25 ppm (4.45 mg/kg/day) in females (LDT; combined lung adenomas and carcinomas) The high-dose females were sacrificed after 5 weeks due to high mortality.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4300	Chronic Feeding Toxicity/Carcinogenicity-Rat	NOAEL = 50 ppm (2.4 mg/kg/day in males, 3.0 mg/kg/day in females) LOAEL = 100 ppm (4.9 mg/kg/day in males, 6.2 mg/kg/day in females) (small, soft testes, decreased testicular weights, and testicular atrophy in males; decreased body weight gain in females)
870.5100	Bacterial Reverse Mutation Test (Ames Assay)	Negative
870.5375	*In Vitro* Chromosomal Aberration in Chinese Hamster Ovary (CHO) Cells	Negative
870.5450	Rodent Dominant Lethal Assay - Rat	Negative
870.5575	D4 Mitotic Gene Conversion Assay	Negative
	P1 Forward Gene Mutation Assay	Negative
870.7485	Metabolism - Rat	The majority of the administered dose of phenyl- or pyrimidinyl- ^{14}C-Cl 217,300 was recovered in the feces (85–98%). Recovery in the urine was minimal (1- to 2% of the administered dose). There were no sex or dose-related differences in urinary or fecal elimination.
870.7600	Dermal Penetration - Rat	Sprague-Dawley rats were dermally dosed with a gel formulation containing 2% a.i. (Maxforce Gel®). Total dose absorbed after 10 hours was 0.414%
870.7600	Dermal Penetration - Rat	Sprague-Dawley rats were dermally dosed with a gel formulation containing 2.16% a.i. (Siege®). Total dose absorbed after 10 hours was 0.97%

B. Toxicological Endpoints

The dose at which no adverse effects are observed (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 lowest dose at which adverse effects 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 intra species differences.

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 x 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 hydramethylnon used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HYDRAMETHYLNON FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 5 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.05 mg/kg/day	Developmental toxicity in rabbits LOAEL = 10 mg/kg/day based on abortions.
Acute Dietary (General population including infants and children)	-	-	There is no appropriate single dose endpoint for the general population.
Chronic Dietary (All populations)	NOAEL= 1.66 mg/kg/day UF = 100 Chronic RfD = 0.017 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.017 mg/kg/day	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Short-Term Incidental Oral (1–30 days)	Oral NOAEL= 1.66 mg/kg/day	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Intermediate-Term Incidental Oral (1–6 months)	Oral NOAEL= 1.66 mg/kg/day	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Short-Term Dermal (1 to 30 days)(Residential)	Oral NOAEL= 1.66 mg/kg/day (dermal absorption rate = 1%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Intermediate-Term Dermal (1 week to 6 months) (Residential)	Oral NOAEL = 1.66 mg/kg/day(dermal absorption rate = 1%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Long-Term Dermal (several months to lifetime) (Residential)	Oral NOAEL= 1.66 mg/kg/day (dermal absorption rate = 1%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Short-Term Inhalation (1 to 7 days) (Residential)	inhalation (or oral) study NOAEL= 1.66 mg/kg/day(inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Intermediate-Term Inhalation (1 week to several months) (Residential)	inhalation (or oral) study NOAEL = 1.66 mg/kg/day(inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Long-Term Inhalation (several months to lifetime) (Residential)	inhalation (or oral) study NOAEL= 1.66 mg/kg/day(inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	2-Generation reproductive toxicity in rats LOAEL = 3.32 mg/kg/day based on testicular effects.
Cancer (oral, dermal, inhalation)	The Agency's Cancer Peer Review Committee determined that hydramethylnon should be classified as a Group C-possible human carcinogen, and recommended that, for the purpose of risk characterization, the Reference Dose approach should be used for quantification of human risk. The Cancer Peer Review report was issued on March 28, 1991. The Agency's HIARC committee concurred with the cancer classification on March 4, 2003.		

*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.* Tolerances have been established (40 CFR 180.395) for the residues of hydramethylnon, on grass and grass hay for pasture and rangeland at 0.05 ppm established in terms of parent only, tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone (3-(4-(trifluoromethyl)phenyl)-1-(2-(4-(trifluoromethyl)phenyl)ethenyl)-2-propenylidene) hydrazone. The Agency determined that the residue of concern in grasses and the milk, meat, and meat byproducts of ruminants is hydramethylnon per se, and that there is no reasonable expectation of finite hydramethylnon residues of concern in

the milk, meat, and meat byproducts of ruminants 40 CFR 180.6(a)(3) as a result of hydramethylnon use on grasses. The Agency has also previously recommended that the grass forage tolerance be increased to 2.0 ppm and the grass hay tolerance be increased to 0.1 ppm. The residue chemistry and toxicological databases support the requested tolerance of 0.05 ppm for hydramethylnon on pineapple. Since there are no detectable hydramethylnon residues in the pineapple feed item, process residues, tolerances for hydramethylnon residues in animal commodities need not be established. Risk assessments were conducted by EPA to assess dietary exposures from hydramethylnon 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 one day or single exposure. An unrefined, Tier 1 acute dietary exposure assessment was conducted using tolerance-level residues and assuming 100% crop treated (CT) for all registered and proposed commodities. The acute analysis was conducted for females 13–49 years old only as no appropriate single dose endpoint was established for the general U.S. population and infants and children.

The acute dietary exposure estimates are well below the Agency's level of concern (<100% aPAD) at the 95th exposure percentile for females 13–49 years old (<1% of the aPAD).

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996/1998 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 chronic exposure assessments: A Tier 1 (conservative, deterministic assessment using tolerance-level residues, and 100% crop treated (CT) for the proposed commodity; and DEEM-FCID® ver. 1.30, processing factors set to (1) a chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups. The chronic dietary exposure estimates are well below the Agency's level of concern (<100% cPAD) for the general U.S. population (<1% of the cPAD) and all population subgroups.

iii. *Cancer*. In a chronic feeding/carcinogenicity study in Charles River CD rats, no compound-related clinical signs were observed and survival was not affected by treatment. The LOAEL was based on small, soft testes, decreased testicular weights (27%), and testicular atrophy in males; and decreased body weight gain in females (22%). Statistically significant findings of neoplasia were found in the uterus (adenomatous polyps) and adrenals (medullary adenomas), but these were not considered toxicologically significant because they were seen at doses above the MTD.

In an 18 month carcinogenicity feeding study in Charles River CD-1 mice, survival decreased as the dose increased, but not enough to jeopardize the study. The LOAEL was based on testicular degeneration (hypospermia, interstitial cell hyperplasia of Leydig cells, and germinal cell degeneration) in males, and combined lung adenomas and carcinomas in females. Findings of hyperplasia and neoplasia in the lungs of males were not considered toxicologically significant because they were seen at doses above the MTD. Findings in females of statistically significant increases in lung adenomas and combined lung adenomas/carcinomas were, however, considered toxicologically significant.

The Agency's Cancer Peer Review Committee classified hydramethylnon as a Group C-possible human carcinogen, and recommended that, for the purpose of risk characterization, the Reference Dose approach should be used for quantification of human risk. This classification was based upon statistically significant increases in lung adenomas and combined lung adenomas/carcinomas in female mice. Dietary risk concerns due to long-term consumption of hydramethylnon residues are adequately addressed by the chronic exposure analysis using the RfD.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

A routine chronic dietary exposure analysis for pineapple was based on 100% of pineapple crop treated, and 100% of grasses, forage (pasture and rangeland) treated with hydramethylnon.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA used a conservative, model assessment as outlined in Unit III.C.1.ii. above, using tolerance-level residues and 100% CT for the proposed commodity pineapple, and existing commodities. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which hydramethylnon may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for hydramethylnon 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 use pattern, physical characteristics and environmental fate of hydramethylnon.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentation in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1

model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides and an index reservoir with the percent crop area adjustment.

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 and transformation of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide an initial 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 percent of reference dose or percent of population adusted dose (%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 hydramethylnon they are further discussed in the aggregate risk sections in Unit III.E.

Based on the FIRST and SCI-GROW models the EECs of hydramethylnon for acute exposures are estimated to be 76.09 parts per billion (ppb) for surface water and 0.035 ppb for ground water. The EECs for chronic exposures are estimated to be 1.45 ppb for surface water and 0.035 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).

Hydramethylnon is currently registered for use on the following residential non-dietary sites: Hydramethylnon is used as a bait in child resistant packaging (CRP) and as a gel bait to control ants and roaches indoors, and as a granular formulation to control ants in yards and on lawns. It is also applied by pest control operators (PCOs) in the same forms for indoor and outdoor pest control. The risk assessment was conducted using the following residential exposure assumptions: The Agency has completed a non-dietary exposure and risk assessment for hydramethylnon including the following uses: residential consumers applying granular and gel formulations; children and adults contacting recreational turf or residential lawns treated with hydramethylnon; and toddlers' incidental nondietary ingestion of products applied around the home. Non-occupational handler exposures from the granular formulations applied to outdoor residential sites are assumed to be short-term in duration, based on rapid dissipation and insect foraging.

No chemical-specific data were submitted for the registration of hydramethylnon uses. Per an Agency policy, non-occupational handler assessments are based on surrogate unit exposures from the draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments (12/18/97) and recommended approaches by the Agency's Exposure Science Advisory Committee (ExpoSAC). Updates to the Residential SOPs (02/01) alter the residential postapplication scenario assumptions. These updated assumptions are expected to better represent residential exposure and are still considered to be high-end, screening level assumptions. The non-occupational handler assessments for push type granular spreaders were based on surrogate unit exposures from two Outdoor Residential Exposure Task Force (ORETF) studies.

The ant bait stations containing hydramethylnon are in child-resistant packaging (CRP). The bait stations are supposed to be placed in less accessible locations such as in or under kitchen counters. However, handling or mouthing of the bait stations is the most commonly reported incidental ''exposure'' to hydramethylnon. Such exposures involve, at most, children mouthing the bait container with little or no contact with the actual bait. In the absence of an applicable acute dietary endpoint, and with the vast majority of incident data resulting in little or no health effects, no quantitative assessment of accidental exposure to the internal contents of bait stations was conducted. The gel product containing hydramethylnon is supposed to be applied in dime-sized portions in locations inaccessible to children. Accidental ingestion of gel from such application is considered unlikely and was therefore not assessed.

Adult consumer exposures when installing and removing bait stations are expected to be minimal. Consumer exposure when applying the gel compound from a syringe is considered negligible. Limited accessibility (i.e., crack, crevice, behind appliances, in crawl spaces) of the gel and granular formulations when used by professional applicators in the home make it unlikely that residents would be exposed to these formulations indoors. For the proposed application of granules to outdoor residential sites, dermal MOEs calculated for non-occupational handlers were 10,000 or greater.

Dermal postapplication exposure from lawns treated with hydramethylnon granules at the maximum application rate of 2.2 lb product per acre (0.022 lb ai/A) were estimated using standard assumptions, as no chemical-specific residue data were available. For adults and children playing actively for two hours on a just-treated lawn, the estimated MOEs were 41,000 and 24,000, respectively. The aggregate (dermal, hand-mouth and object-mouth) MOE for a 15 kg child playing on a lawn was 4,000. The MOE for incidental ingestion of 3 mg of 1% hydramethylnon granules found on the surface of the lawn was 850. The hydramethylnon granules are formulated as small granules to allow for ant removal, and are therefore not easily noticed by a child, and ingestion is unlikely.

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 hydramethylnon 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, hydramethylnon 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 hydramethylnon 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.* The Agency has concluded that there is no concern for pre- and/or postnatal toxicity resulting from exposure to hydramethylnon.

3. *Conclusion.* There is a complete toxicity data base for hydramethylnon and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency determined that no special FQPA Safety Factor is needed (1x) for hydramethylnon. The exposure databases (dietary food, drinking water, and residential) are complete and the risk assessment for each potential exposure scenario includes all metabolites and/or degradates of concern and does not underestimate the potential risk for infants and children.

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 the USEPA 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 groundwater 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 hydramethylnon will occupy <1% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to hydramethylnon in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HYDRAMETHYLNON.

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	0.05	<1	76.09	0.035	1,500

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to hydramethylnon from food will utilize <1% of the cPAD for the U.S. population, and <1% (0.02%) of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of hydramethylnon is not expected. In addition, there is potential for chronic dietary exposure to hydramethylnon in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HYDRAMETHYLNON

Population Subgroup	cPAD mg/kg/day	Chronic Food Exposure (mg/kg/day)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.017	0.000005	1.45	0.035	600
All infants (<1 year old)	0.017	0.000012	1.45	0.035	170
Children (1–2 years old)	0.017	0.000026	1.45	0.035	170
Children (3–5 years old)	0.017	0.000016	1.45	0.035	170

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HYDRAMETHYLNON—Continued

Population Subgroup	cPAD mg/kg/day	Chronic Food Exposure (mg/kg/day)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children (6–12 years old)	0.017	0.000008	1.45	0.035	170
Youth (13–19 years old)	0.017	0.000002	1.45	0.035	170
Adults (20–49 years old)	0.017	0.000003	1.45	0.035	600
Females (13–49 years old)	0.017	0.000004	1.45	0.035	510
Adults (50+ years old)	0.017	0.000002	1.45	0.035	600

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). Hydramethylnon is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for hydramethylnon.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of exposures for both adults (MOE = 8,000; handler and post-application) and children (MOE = 680; post-application). Therefore, the turf-treatment exposure estimates were aggregated with the chronic dietary (food) to provide a worst-case estimate of short-term aggregate risk for the U.S. population and children 1–2 years old (the child population subgroup with the highest estimated average (chronic) dietary food exposure). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of hydramethylnon in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO HYDRAMETHYLNON

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
US Population	7,700	100	76.09	0.035	580
Children 1–2 years old	3,300	100	76.09	0.035	165

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). Though residential exposure could occur with the use of hydramethylnon, an intermediate-term aggregate risk assessment was not performed because it is based on the same toxic endpoint and dose as the short-term, and the higher exposure used in the short-term assessment represents a worse case.

5. *Aggregate cancer risk for U.S. population*. A separate cancer aggregate risk assessment was not performed because the Reference Dose approach was recommended for quantification of human risk. Cancer risks are adequately addressed by the chronic aggregate and assessment which used the chronic reference dose (cRfD).

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 hydramethylnon residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The method presented by BASF Corporation and designated M 2458, is the predecessor to method M 2458.01 for which BASF Corporation has submitted as an independent method validation. The updated method corrects some typographical errors and clarifies some of the fractionation steps. Adequate enforcement methodology (example—gas chromatography) 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 maximum residue limits for hydramethylnon in/on pineapple have been established or proposed by Codex, Canada, or Mexico for any agricultural commodity; therefore, no compatibility concerns exist with respect to U.S. tolerances.

C. Conditions

The following studies are required to further characterize the environmental effects of hydramethylnon: Estuarine/marine fish LC_{50} (72–1), Estuarine/marine invertebrate EC_{50} (72–2), and Sediment Toxicity Testing (Harmonized guidelines 850.1735 and 850.1740). In addition, the following studies are required for any future expansion of hydramethylnon uses: Aquatic Photodegradation (161–2), Aerobic Aquatic Metabolism (162–4), and Terrestrial Field Dissipation (164–1).

D. Recommendation for Tolerances

The residue chemistry and toxicological databases support the requested tolerance of 0.05 ppm for hydramethylnon on pineapple. The Agency has also previously recommended that the grass (pasture and rangeland) tolerance be increased to 2.0 ppm and the grass hay (pasture and rangeland) tolerance be increased to 0.1 ppm (Hydramethylnon RED, EPA 738–R–98–023, 12/98).

V. Conclusion

Therefore, the tolerance is established for residues of hydramethylnon, in or on pineapple at 0.05 ppm., and revised for grass (pasture and rangeland) at 2.0 ppm, and grass hay (pasture and rangeland) at 0.1 ppm respectively.

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–2003–0251 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 October 14, 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–2003–0251, 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: July 31, 2003.

Debra Edwards,

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 180.395 is amended by adding alphabetically the commodity ''pineapple'' to the table in paragraph (a) to read as follows:

§ 180.395 Hydramethylnon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pineapple	0.05
* * * * *	

[FR Doc. 03–20432 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0134; FRL–7320–5]

Diallyl Sulfides; Exemption from the Requirement of a Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of July 9, 2003, establishing an exemption from the requirement of a tolerance for residues of diallyl sulfides (DADs) in/or garlic, leeks, onions, and shallots. This document corrects a typographical error in the preamble that appeared in that document.

DATES: This document is effective on August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have 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–2003–0134. 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.

II. What Does This Correction Do?

In the **Federal Register** of July 9, 2003 (68 FR 40803) (FRL–7303–6), EPA published a final rule establishing an exemption from the requirement of a tolerance for residues of diallyl sulfides (DADs) in/or garlic, leeks, onions, and shallots. This document corrects a typographical error that appeared in that document; the word pentasulfide should have appeared as tetrasulfide. The document is corrected as follows:

On page 40804, second column, under Unit IV., the second paragraph, the first sentence is corrected to read as follows: ''DADs are a composition of diallyl sulfides that includes diallyl monosulfide, diallyl disulfide, diallyl trisulfide, and diallyl tetrasulfide.''

III. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's action final without prior proposal and opportunity for comment, because EPA is merely correcting a typographical error. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to This Action?

This final rule corrects a typographical error in the preamble of a previously published final rule, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a correction is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments 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). This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any ''federalism implications'' as described in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Since this direct final rule is not a ''significant regulatory action'' as defined by Executive Order 12866, it does not require 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), and 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 action does not involve any technical standards that require the Agency's 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). This action will not result in environmental justice related issues and does not, therefore, require special consideration 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 Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. 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

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 1, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division.

[FR Doc. 03–20530 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7542–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the Monticello Mill Tailings (USDOE) Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 8, is publishing a direct final notice of partial deletion of the Monticello Mill Tailings (USDOE) Superfund Site (the Site), located in Monticello, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of partial deletion is being published by EPA because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate. The State of Utah, through the Utah Department of Environmental Quality (UDEQ), concurs with the decision for partial deletion of the Site from the NPL provided that no adverse comments are received during the public comment period.

Partial deletion of an NPL site is provided for under the Partial Deletion Rule (November 1, 1995), which allows EPA to delete portions of NPL sites provided that deletion criteria are met. This partial deletion pertains to a portion of the Site designated as the Operable Unit (OU) II Non-Surface and Ground-Water Impacted Peripheral Properties, which are located within OU II of the Site. The OU II Non-Surface and Ground-Water Impacted Peripheral Properties are 22 of the 34 total properties that comprise OU II. These 22 properties were selected for deletion from the NPL because the primary contaminants of concern, radioactive materials in soils and sediment, have been removed to levels protective of human health and the environment, and because no radiological or nonradiological contamination is present in surface water or ground water located on these properties. The remainder of the Site, which includes OU I, the 12 other properties within OU II, and contaminated surface water and/or ground water located on OUs I and II (designated as OU III), will remain on the NPL. Radioactive materials in soils and sediment have been removed from OU I and the 12 other properties within OU II; however, radiological contamination and other nonradiological contaminants of concern, such as arsenic, selenium, and vanadium, persist in the surface water and/or ground water in these areas.

DATES: This direct final partial deletion will be effective October 14, 2003, unless EPA receives adverse comments by September 12, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Comments may be mailed to: Mr. Paul Mushovic (8EPR–F), Remedial Project Manager, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, *mushovic.paul@epa.gov,* (303) 312–6662 or 1–800–227–8917.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Department of Energy-Grand Junction Office (DOE–GJO) Public Reading Room, 2597 B ¾ Road, Grand Junction, Colorado 81503, (970) 248–6089, Monday through Friday 7:30 a.m. to 4 p.m.; U.S. DOE Repository Site Office, 7031 South Highway 191, Monticello, Utah 84535, (435) 587–2098, Monday through Friday 8 a.m. to 5 p.m., or by appointment.

FOR FURTHER INFORMATION CONTACT: For information regarding Site deletion, contact Mr. Paul Mushovic (8EPR–F), Remedial Project Manager, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, *mushovic.paul@epa.gov,* (303) 312–6662 or 1–800–227–8917. For other general Site information, contact Mr. Art Kleinrath, Program Manager, U.S. DOE, 2597 B ¾ Road, Grand Junction, Colorado 81503, *art.kleinrath@gjo.doe.gov,* (970) 248–6037, or Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis For Partial Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this direct final notice of partial deletion of the Monticello Mill Tailings (USDOE) Superfund Site (the Site) from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to partially delete. This action will be effective October 14, 2003 unless EPA receives adverse comments by September 12, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final partial deletion before its effective date and the partial deletion will not take effect. In such case, EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting or partially deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the partial deletion criteria. Section V discusses EPA's action to partially delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. Section 300.425(e) of the NCP governs partial deletions of releases from the NPL in the same manner. In making a determination to delete or partially delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;

Section 300.425(e)(1)(ii): All appropriate Fund-financed (Hazardous

Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is partially deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted portion of the site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release at a site partially deleted from the NPL, the deleted portion may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties portion of the Site from the NPL:

(1) The EPA consulted with the State of Utah (UDEQ) on the partial deletion of the Site from the NPL prior to developing this direct final notice of partial deletion.

(2) The State of Utah (UDEQ) concurred with partial deletion of the Site from the NPL provided that no adverse comments are received during the public comment period.

(3) Concurrently with the publication of this direct final notice of partial deletion, a notice of the availability of the parallel notice of intent to partially delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to partially delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final partial deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received.

Deletion or partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion or partial deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions. Section 300.425(e)(3) of the NCP governs partial deletion of a site from the NPL in the same manner.

IV. Basis For Partial Site Deletion

The following information provides EPA's rationale for deletion of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties portion of the Site from the NPL:

Site Location

The Site is located in and adjacent to (primarily southeast) the City of Monticello (City), San Juan County, Utah. The Site consists of 36 private and public properties covering approximately two square miles. The Site is divided into OU I (the former Millsite and repository south of the Millsite), OU II (properties near the former Millsite, referred to as peripheral properties, primarily contaminated with windblown tailings, and properties with contaminated sediment from Montezuma Creek), and OU III (surface water and/or ground water contamination). The partial deletion area of the Site, designated as the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, covers approximately one square mile within OU II. The OU II Non-Surface and Ground-Water Impacted Peripheral Properties are 22 of the 34 total properties that comprise OU II. These 22 properties are primarily vacant land, with portions of some properties being used for agricultural purposes. The following table lists the 22 OU II Non-Surface and Ground-Water Impacted Peripheral Properties that comprise the partial deletion area.

MONTICELLO MILL TAILINGS (USDOE) SITE OU II NON-SURFACE AND GROUND-WATER IMPACTED PERIPHERAL PROPERTIES

Property DOE identification No.	Property location
MP–00105–VL ...	Parcel No. A33240316000 San Juan County Monticello, Utah
MP–00178–RS ..	Parcel No. A33240310008 San Juan County Monticello, Utah
MP–00180–CS ..	Parcel No. A33240313605 San Juan County Monticello, Utah
MP–00198–VL ...	Parcel No. A33240312409 San Juan County Monticello, Utah
MP–00211–VL ...	Parcel No. A33230367200 San Juan County Monticello, Utah
MP–00845–VL ...	Parcel No. A33240313604 San Juan County Monticello, Utah
MP–00886–VL ...	Parcel No. A33230369007 San Juan County Monticello, Utah
MP–00887–VL ...	Parcel No. A33230369000 San Juan County Monticello, Utah
MP–00888–VL ...	Parcel No. A33230369006 San Juan County Monticello, Utah
MP–00947–VL ...	Parcel No. 33S24E317201 San Juan County Monticello, Utah
MP–00948–VL ...	Parcel No. A33240310013 San Juan County Monticello, Utah
MP–00949–RS ..	Parcel No. A33240310014 San Juan County Monticello, Utah
MP–00950–VL ...	Parcel No. A33240310015 San Juan County Monticello, Utah
MP–00963–OT ..	Parcel No. A33240314200 San Juan County Monticello, Utah
MP–00964–VL ...	Parcel No. A33240312408 San Juan County Monticello, Utah
MP–00988–VL ...	Parcel No. 33S24E325400 San Juan County Monticello, Utah
MP–01040–VL (North Portion).	Parcel No. 34S24E061200 San Juan County Monticello, Utah
MP–01041–VL ...	Parcel No. 34S24E060600 San Juan County Monticello, Utah
MP–01042–VL ...	Parcel No. 34S24E060000 San Juan County Monticello, Utah
MP–01081–VL ...	Parcel No. 34S24E052400 San Juan County Monticello, Utah
MP–01083–MR ..	Parcel No. A33230317203 San Juan County Monticello, Utah
MP–01102–VL ...	Parcel No. A33240313610 San Juan County Monticello, Utah

A Locational Data Package that provides the latitudinal/longitudinal coordinates and a map of the Site and the OU II Non-Surface and Ground-Water Impacted Peripheral Properties is available to the public in the Site information repositories identified above.

Site History

The Monticello Millsite, located within OU I of the Site, was constructed with government funding in 1942 by the Vanadium Corporation of America (VCA) to provide vanadium, a steel hardener, during World War II. Vanadium was produced through the milling of uranium-bearing ore. The VCA operated the Millsite until early 1944 and again from 1945 through 1946, producing vanadium as well as a uranium-vanadium sludge for the Manhattan Engineer District. The U.S. Atomic Energy Commission (AEC) purchased the Millsite in 1948. Uranium and vanadium milling operations began again in 1949 under the auspices of the AEC. Vanadium milling operations ceased in 1955, with uranium milling continuing until 1960 when the Millsite was permanently closed. Four piles of tailings, the processing wastes remaining from uranium ore milling, were left at the Millsite following the cessation of milling operations. The total volume of tailings and soil mixed with tailings in these four piles was originally estimated to be approximately 1,570,000 cubic yards.

The tailings had significant radioactivity, especially from the presence of radium-226 (Ra-226), and contained certain potentially toxic, nonradioactive metals. Properties in and around the City became contaminated primarily by windblown tailings from these four piles. Tailings from the Millsite also were used as construction material and backfill on properties in and around the City. In addition, tailings were transported from the Millsite to downstream properties via Montezuma Creek. The Millsite and certain surrounding properties also became contaminated with residues from ore stockpiles and with by-product materials generated during Millsite operations. It was originally estimated that properties outside the boundary of the Millsite contained approximately 400,000 cubic yards of tailings-contaminated soils. Surface water and ground water on the Millsite and on certain properties outside the boundary of the Millsite became contaminated with radioactive materials and with toxic nonradioactive metals associated with tailings, such as arsenic, selenium, and vanadium.

In 1961, the four tailings piles were stabilized and covered with uncontaminated rock and dirt to minimize the spread of contamination. Millsite buildings and equipment also were dismantled, some of which were buried on the Millsite. In 1974–1975, additional contouring of the Millsite and demolition of the mill foundations were undertaken to reduce exposure levels. In 1980, the Monticello Millsite was accepted into the U.S. Department of Energy's Surplus Facilities Management Program (SFMP), which was established for caretaking and decommissioning of inactive government facilities that still had radiological contamination. Also in 1980, the U.S. Department of Energy-Grand Junction Office (DOE–GJO) established the Monticello Remedial Action Project (MRAP) to isolate tailings-related sources and thereby prevent them from causing harm to human health or the environment.

Two separate NPL sites were established in the Monticello area because of the spread of radioactive mill tailings. On June 10, 1986, the Monticello Vicinity Properties (MVPs), which eventually totalled 424 private and commercial properties in the City, were established as the first NPL site, designated as the Monticello Radioactive Contaminated Properties (51 FR 21054 (June 10, 1986)). Mill tailings removed from the Monticello Radioactive Contaminated Properties Site were stockpiled temporarily at the Millsite pending final disposal in the repository south of the Millsite. Once removal of tailings-related contamination in accordance with project cleanup standards was completed, the Monticello Radioactive Contaminated Properties Site was fully deleted from the NPL on February 28, 2000 (64 FR 73423 (December 30, 1999)).

The Monticello Mill Tailings (USDOE) Superfund Site (the Site) was the other NPL site established in the Monticello area. In December 1988, EPA, UDEQ, and DOE entered into a Federal Facility Agreement (FFA), pursuant to section 120 of CERCLA, 42 U.S.C. 9620, to facilitate remediation of the Site. The FFA established that the DOE was a responsible party (RP) and the lead agency for remediation at the Site. The DOE–GJO was tasked with providing principal staff and resources to plan and implement response actions at the Site. The EPA was identified as the lead regulatory agency with ultimate responsibility and authority for oversight of activities performed by DOE–GJO, but it was to share its decision making with UDEQ. In June 1989, prior to the Site being placed on the NPL, remedial action was initiated at the Site at one of the 22 OU II Non-Surface and Ground-Water Impacted Peripheral Properties. The EPA placed the Site on the NPL on November 21, 1989 (54 FR 48184 (November 21, 1989)). Removal of tailings-related contamination in accordance with project cleanup standards was completed at the last of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties in January 2000. The EPA, UDEQ, and DOE–GJO agreed on March 28, 2000, that deletion of the Site from the NPL would be accomplished with partial deletions. Deletion of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties from the NPL was deemed appropriate because radioactive materials in soils and sediment had been removed to levels protective of human health and the environment and because no radiological or nonradiological contamination was present in surface water or ground water located on these properties.

Remedial Investigation and Feasibility Study (RI/FS)

The RI/FS for the Site was completed in January 1990. The RI determined that Millsite operations had resulted in the spread of tailings-related contamination to the soil, surface water, ground water, and air. Most soils on the Millsite (OU I) were found to be contaminated with tailings and ore, some to a depth of 18 feet. Soils contaminated with tailings and ore were also identified on at least 200 acres of the peripheral properties (OU II) located adjacent to the Millsite. Tailings-contaminated sediments (OU II), transported off the Millsite by Montezuma Creek, were found approximately three miles down-gradient from the Millsite boundary. Radiological contamination was also detected in surface water (OU III) (Montezuma Creek) approximately three miles down-gradient from the Millsite boundary. Radiological contamination and other nonradiological contaminants of concern, such as molybdenum, selenium, and vanadium, were detected in ground water (OU III) beneath the Millsite and beneath properties located approximately 4,600 feet down-gradient from the Millsite boundary. Air at all locations sampled within the Millsite boundary was found to be contaminated with radon gas.

Besides characterizing the extent of contamination on the Site, analytical data collected for the RI were used to perform human health risk assessments.

These assessments addressed the health risks posed by both the radiological and nonradiological contaminants associated with tailings. The primary tailings-related radiological contaminants of concern were gamma radiation and radon gas. The highest risk tailings-related nonradiological contaminants of concern included arsenic, copper, lead, molybdenum, selenium, uranium, vanadium, and zinc.

The FS evaluated alternatives for remediation of the Site for each of OUs I, II, and III. The analytical data collected for the RI were used in the development and evaluation of these alternatives. The remedial alternatives evaluated for OUs I and II ranged from no action to removal of tailings contamination to a licensed off-site facility. The remedial alternatives evaluated for OU III ranged from no action to active ground and surface water collection, treatment, and discharge.

Record of Decision Findings

A Record of Decision (ROD) for the Site was signed by UDEQ and EPA on August 21 and 22, 1990, respectively. The ROD identified the selected remedy for remediation of OUs I and II. Because the selected remedy for remediation of OU III was dependent on the implementation of the selected remedy for OUs I and II and its effect on ground and surface water contamination, it was determined that a separate ROD would be issued for OU III at a later date. A ROD for an Interim Remedial Action at OU III was signed by EPA and UDEQ in September 1998. The interim selected remedy was to allow for passive treatment of contaminated ground water through natural flushing and to implement institutional controls that would limit access to ground water pending the collection of sufficient data to develop a final OU III ROD. Contamination in surface water was expected to diminish as a result of the removal of the source (tailings contamination) from OUs I and II and natural flushing of the ground water.

The selected remedy for remediation of OUs I and II of the Site, including the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, was to remove radioactive materials to meet specific cleanup standards, modify existing structures to isolate radon sources from inhabitants, and restore with clean materials. Cleanup activities required excavation and, in some cases, demolition of structures and other property improvements. All affected structures and other improvements were reconstructed or the owner was compensated based on their current value. The selected remedy also allowed for the implementation of supplemental standards and institutional controls such that tailings contamination exceeding the cleanup standards was permitted to remain on certain properties where cleanup would cause excessive risk of injury to workers or the public, where cleanup would cause excessive environmental damage, and/or where cleanup costs would be excessive relative to the benefits. Excavated materials were disposed of in a repository that was built approximately one mile south of the Millsite.

The ROD stipulated numerous applicable or relevant and appropriate requirements (ARARs) to govern remedial actions on OUs I and II. The following ARARs, used for the remediation of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, established contaminant-specific limits for the cleanup of radiologically contaminated soils and sediments:

- 40 CFR part 192—Sets forth contaminant-specific numerical cleanup standards for Ra-226, radon decay products, and gamma radiation at 40 CFR 192.12. Criteria for using supplemental standards in lieu of the numerical cleanup standards set forth at 40 CFR 192.12 are provided at 40 CFR 192.21.
- DOE's Guidelines for Residual Radioactive Material at Formerly Utilized Sites Remedial Action Program and Remote Surplus Facilities Management Program Sites (FUSRAP/SFMP)—Provides additional guidelines for cleanup of radiological contamination that exceeds the numerical standards of 40 CFR 192.12 that is located in an area of a given size (DOE ''hot spot'' criteria).
- Resource Conservation and Recovery Act (RCRA)—Identified as a potential ARAR with regard to the management of any hazardous wastes encountered during remediation that were not governed by the cleanup standards set forth at 40 CFR part 192.
- DOE Order 5400.5 ''Radiation Protection of the Public and Environment''—This was not an ARAR identified in the ROD but was implemented to guide the cleanup of uranium materials on property MP–00211–VL, one of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties.
- EPA Region III Risk-Based Concentration Table (First Quarter 1995)—This was not an ARAR identified in the ROD but was implemented to guide the cleanup of certain nonradiological hazardous substances associated with uranium yellow cake, which was discovered during the remediation of property MP–00211–VL.
- State of Utah Underground Storage Tank Rules—This was not an ARAR identified in the ROD but was implemented to guide the excavation and disposal of underground storage tanks and associated wastes that were discovered during the remediation of certain Site properties.

The ROD stipulated that design components for the repository built south of the Millsite would be based on standards specified in 40 CFR 192.02, the Uranium Mill Tailings Radiation Control Act of 1978, the Uranium Mill Tailings Remedial Action (UMTRA) Program, and on standards that would enable the repository to meet the requirements for a RCRA Subtitle C hazardous waste disposal facility.

Characterization of Risk

The RI/FS identified gamma radiation and radon gas as the primary radiological contaminants of concern associated with uranium and vanadium mill tailings. Health risk assessments identified exposure to gamma radiation and inhalation of radon and radon daughters as the two most significant potential direct exposure pathways to these radiological contaminants. Gamma radiation emanates from tailings and delivers a radioactive dose to the entire body. Radon-222 and daughter products, which decay from Ra-226 contained in the tailings and migrate into the atmosphere, emit alpha radiation that affects the lungs when inhaled.

The RI/FS also identified the following eight elements as the highest tailings-related nonradiological contaminants of concern due to their potential chemical toxicity: arsenic, copper, lead, molybdenum, selenium, uranium, vanadium, and zinc (uranium was considered to be a higher risk due to chemical toxicity rather than radioactivity). The RI/FS health risk assessments determined that the two most significant potential exposure pathways to these nonradiological contaminants were ingestion of contaminated vegetables and ingestion of contaminated beef. These were considered to be indirect exposure pathways resulting from contaminated surface water being used to irrigate fields and water livestock, thereby introducing the nonradiological contaminants into the food chain. Direct exposures to the nonradiological contaminants through contact with contaminated soil, water, or air were determined to be negligible health risks.

Contact with contaminated water, the most significant potential direct exposure pathway, was considered to be a negligible health risk because contaminated surface and ground waters were not used as sources for drinking water.

Assessment of the various environmental media on the Site determined that certain contaminants of concern were within acceptable human health risk ranges and others were not. However, as established in the ROD, remediation of uranium mill tailings to meet specific cleanup standards was required on the Site regardless of risk assessment results. The numerical and supplemental cleanup standards set forth at 40 CFR part 192 for Ra-226, radon, and gamma radiation were the principal standards used to define acceptable health risk levels on the Site, including the OU II Non-Surface and Ground-Water Impacted Peripheral Properties. There were no human health risks associated with surface water or ground water located on the OU II Non-Surface and Ground-Water Impacted Peripheral Properties because these media were not contaminated on these properties.

All properties comprising the Site, including the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, were individually evaluated to determine the presence of radiological contamination. After obtaining access permission from the property owner(s), a radiological inclusion survey was conducted by DOE–GJO or a DOE–GJO contractor to determine whether the property qualified for inclusion into the Site cleanup project. The property was excluded from the project and no further action was taken when radiological contamination exceeding project cleanup standards was not detected. When contamination exceeding project cleanup standards was detected, the property was included by DOE–GJO into the Site cleanup project.

The property owner(s) signed a Remedial Action Agreement (RAA), which granted access to the property for surveys and construction and defined any construction completion requirements or remuneration for dislocation or structure demolition. A DOE–GJO contractor performed a detailed radiological assessment survey of the property that was used as the basis for the Remedial Action Design (RAD) and cost estimate. When the presence of nonradiological hazardous substances was suspected, the property was surveyed to determine whether remediation of nonradiological hazardous substances was required. A RAD report was approved by DOE–GJO and concurred with by UDEQ. The RAD report presented the assessment survey results and the design for remedial action for the property.

Response Actions

Radioactive materials, primarily in the form of soil contaminated with uranium mill tailings and residues from ore stockpiles, were removed from the OU II Non-Surface and Ground-Water Impacted Peripheral Properties. Remedial activities consisted of the following:

- Excavation of contaminated material from the OU II Non-Surface and Ground-Water Impacted Peripheral Properties began in June 1989. All contaminated soil and construction materials exceeding the cleanup standards specified in 40 CFR 192.12, except where supplemental standards were implemented, were excavated and disposed by the DOE–GJO Remedial Action Contractor (RAC).
- After removal of contaminated material and before backfilling, verification surveys were performed by the DOE–GJO RAC to demonstrate compliance with the 40 CFR 192.12 cleanup standards. For the supplemental standards properties and property MP–00211–VL, verification surveys were performed to demonstrate compliance with property-specific cleanup levels corresponding with current land use scenarios. Verification surveys were completed on the OU II Non-Surface and Ground-Water Impacted Peripheral Properties by January 2000.
- Post-construction monitoring of radon levels was performed, where applicable, to verify compliance with 40 CFR 192.12 cleanup standards.
- Backfill was placed in excavated areas and properties were reconstructed to a physical condition comparable to that which existed before remedial activities.
- EPA, UDEQ, and DOE–GJO conducted numerous Site visits throughout the course of remedial activities, including at the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, to observe assessment surveys, remedial action, verification sampling, and restoration.
- Contaminated material removed from the OU II Non-Surface and Ground-Water Impacted Peripheral Properties was disposed in a repository built approximately one mile south of the former Millsite. The repository, part of OU I of the Site, contains a double high density polyethylene (HDPE) liner with a leak detection system, thereby meeting the functional equivalence of a RCRA Subtitle C hazardous waste disposal facility. The repository cover is approximately 8.5 feet thick and includes a radon barrier.
- The DOE–GJO RAC prepared a Property Completion Report (PCR) for each of the remediated OU II Non-Surface and Ground-Water Impacted Peripheral Properties. The PCRs document the remedial activities performed for each property, including assessment results, verification surveys, and volumes and areas excavated. EPA and UDEQ approved all PCRs for the OU II Non-Surface and Ground-Water Impacted Peripheral Properties by March 5, 2001.
- Advanced Infrastructure Management Technologies (AIMTech) (formerly Oak Ridge National Laboratory (ORNL)), the DOE–GJO independent verification contractor (IVC), performed verification of field surveys and measurements, physical sampling, and laboratory analyses for 10 percent of the Site properties. AIMTech performed 100 percent reviews for DOE–GJO RAC documents that reported remedial activities for the OU II Non-Surface and Ground-Water Impacted Peripheral Properties.
- The DOE–GJO RAC prepared a Remedial Action Report (RAR) for the OU II Non-Surface and Ground-Water Impacted Peripheral Properties. The RAR summarizes the remedial actions completed on the properties, the performance standards used to direct the remedial actions, the cost of the remedial actions, and the operations required to preserve the effectiveness of the remedial actions. UDEQ and EPA approved the RAR on May 18, 2001, and June 4, 2001, respectively.

Cleanup Standards

Cleanup standards associated with radioactive materials in tailings-contaminated soils and sediment were the primary standards used to define acceptable health risk levels and to guide remediation efforts for the OU II Non-Surface and Ground-Water Impacted Peripheral Properties. No radiological or nonradiological contamination was identified in surface water or ground water located on these properties, therefore cleanup standards associated with these media were not applicable. Gamma radiation and radon gas were identified as the primary tailings-related radiological contaminants of concern. Reduction of gamma radiation and radon gas associated with uranium mill tailings was achieved through the cleanup of Ra-226. The principal source of radiological cleanup standards used for the

remediation of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, 40 CFR 192.12, specifies the following maximum allowable Ra-226 concentrations for land:

- 5 picocuries per gram (pCi/g) above background in the first 15 centimeters (cm) of soil, averaged over 100 square meters (m^2) (the background Ra-226 concentration for Monticello is approximately 1.0 pCi/g); and
- 15 pCi/g above background in any 15-cm interval more than 15 cm below the surface, averaged over 100 m^2.

40 CFR 192.12 specifies the following maximum allowable radon concentrations and gamma radiation levels for occupied or habitable structures:

- Radon decay-product concentrations (RDCs): less than 0.02 working level (WL) to the extent practicable, and shall not exceed 0.03 WL; and
- Gamma exposure rates: a maximum of 20 microroentgens per hour (μR/h) above background (the background gamma exposure rate for Monticello is approximately 15 μR/h).

In conjunction with the cleanup standards set forth at 40 CFR 192.12, the ''hot spot'' criteria specified in the DOE's Guidelines for Residual Radioactive Material at Formerly Utilized Sites Remedial Action Program and Remote Surplus Facilities Management Program Sites (FUSRAP/SFMP) were considered for cleanup standards. The DOE hot spot criteria specify the maximum radionuclide concentration allowable for a deposit of contamination of a given size that is still protective of human health and the environment.

Supplemental standards, as provided for in 40 CFR 192.21, were implemented in lieu of the 40 CFR 192.12 cleanup standards for the following OU II Non-Surface and Ground-Water Impacted Peripheral Properties. The supplemental standards were developed on a case-by-case basis and were based on health risk assessments. UDEQ and EPA approved the application for these supplemental standards on June 17, 1999, and July 1, 1999, respectively:

- Supplemental standards were implemented for radiologically contaminated material located in an environmentally sensitive piñon/juniper area on property MP–01041–VL. Supplemental standards were implemented on this property because remedial action would directly produce environmental harm that is clearly excessive compared to the health benefits (40 CFR 192.21(b)), and because the cost of remedial action would be unreasonably high relative to the long-term benefits and the residual radioactive materials do not pose a clear present or future hazard (40 CFR 192.21(c)). The supplemental standards permitted radiological contamination exceeding the 40 CFR 192.12 cleanup standards to remain in place. In conjunction with the supplemental standards, institutional controls were implemented that will limit future public exposure to any remaining radiological contamination. The institutional controls, recorded in the San Juan County Courthouse, restrict ownership to a public entity, require the owner to manage the property as publicly accessible open space, prohibit the construction of habitable structures, limit land use to day-use recreation, and prohibit the removal of soil from the property. Institutional controls also include fencing to direct traffic to defined entry and exit points and a requirement for DOE to conduct regular inspections to ensure the selected remedy remains protective of human health and the environment.
- Supplemental standards were implemented for radiologically contaminated material associated with city-owned street and utility rights-of-way. Radiological contamination associated with city-owned street and utility rights-of-way was confirmed on property MP–00180–CS, and may exist within city-owned street and utility rights-of-way located on other OU II Non-Surface and Ground-Water Impacted Peripheral Properties. Supplemental standards were implemented on city-owned street and utility rights-of-way because the cost of remedial action would be unreasonably high relative to the long-term benefits and the residual radioactive materials do not pose a clear present or future hazard (40 CFR 192.21(c)). The supplemental standards permitted radiological contamination exceeding the 40 CFR 192.12 cleanup standards to remain in place. In conjunction with the supplemental standards, institutional controls were implemented that will limit future public exposure to any remaining radiological contamination. The institutional controls, established through a Cooperative Agreement between DOE and the City, require that city-owned street and utility rights-of-way remain open as public rights-of-way without any structures or encumbrances, define the responsibilities of DOE and the City with regard to excavating these areas and managing any radiological contamination that is encountered, and require DOE to conduct inspections to ensure the selected remedy remains protective of human health and the environment.

Property-specific cleanup standards for contaminants in addition to those addressed in 40 CFR 192.12 were established for one property, MP–00211–VL. Cleanup standards were established for thorium-230 (Th-230), uranium, and vanadium for the Phase I portion of MP–00211–VL because of the presence of uranium yellow cake. The maximum allowable Th-230, uranium, and vanadium concentrations for Phase I of MP–00211–VL were:

- Th-230: 15 pCi/g above background in any 15-cm interval of soil more than 15 cm below the surface, averaged over 100 m^2 (derived from the DOE FUSRAP/SFMP guidance);
- Total uranium: 6,100 milligrams per kilogram (mg/kg) (approximately 4,290 pCi/g) in any 15-cm-thick layer of soil, averaged over 100 m^2 (derived from the EPA Region III Risk-Based Concentration Table, Soil Ingestion, Industrial Setting (First Quarter 1995)); and
- Total vanadium: 14,000 mg/kg in any 15-cm-thick layer of soil, averaged over 100 m^2 (derived from the EPA Region III Risk-Based Concentration Table, Soil Ingestion, Industrial Setting (First Quarter 1995)).

Cleanup standards were established for uranium for the Phase II portion of MP–00211–VL because of the proximity of this area to the former mill processing plant. The maximum allowable uranium concentration for Phase II of MP–00211–VL was:

- Total uranium: 300 pCi/g in any 15-cm-thick layer of soil, averaged over 100 m^2 (developed to meet the general radiation protection standards specified in DOE Order 5400.5 ''Radiation Protection of the Public and the Environment'').

The cleanup standards for these additional contaminants for MP–00211–VL are appropriate for the current industrial/recreational land use of this property. In conjunction with these additional cleanup standards, institutional controls were implemented that will limit public exposure to any remaining contamination should the land use change to residential in the future. The institutional controls, implemented through a zoning restriction (City Ordinance No. 2003–2), prohibit the construction of habitable structures on the property unless certain conditions prescribed by the zoning restriction are met. These conditions include a requirement for DOE to survey the excavated foundation footprint of any habitable structure being constructed to check for the presence of uranium. The zoning restriction also

defines the responsibilities of DOE and the City should the noted contaminants be encountered on the property in the future.

Cleanup requirements specified in the Utah Administrative Code, Title R311, ''Utah Underground Storage Tank Rules,'' were used for the remediation of a leaking diesel fuel underground storage tank (UST) and associated petroleum-contaminated soils encountered on Phase I of MP–00211–VL. The abandoned UST and petroleum-contaminated soils were disposed in the repository south of the Millsite. The petroleum contamination that remains at MP–00211–VL in association with these remediated materials is at levels that allow unlimited use or unrestricted exposure.

In summary, radioactive materials in tailings-contaminated soils and sediment and additional contaminants have been removed from the OU II Non-Surface and Ground-Water Impacted Peripheral Properties to meet the prescribed cleanup standards for the current land use. The attainment of these cleanup standards signifies that acceptable health risk levels have been achieved.

Operation and Maintenance

To ensure the long-term effectiveness of the selected remedy, the following OU II Non-Surface and Ground-Water Impacted Peripheral Properties where supplemental standards were implemented for radiological contamination left in place have been included in DOE's Long Term Surveillance and Maintenance (LTSM) Program: property MP–01041–VL and properties such as MP–00180–CS where radiological contamination remains in association with city-owned street and utility rights-of-way. The LTSM Program will monitor these properties to confirm that the supplemental standards and the previously described institutional controls are maintained to limit future public exposure to any remaining radiological contamination. In addition, the LTSM Program will monitor property MP–00211–VL to confirm that the appropriate zoning restriction conditions are maintained to limit exposure to any remaining contamination. Monitoring of property MP–00211–VL includes a procedure for surveying the excavated foundation footprint of any habitable structure being constructed for the presence of uranium. No other operation and maintenance is required on the OU II Non-Surface and Ground-Water Impacted Peripheral Properties to preserve the selected remedy.

Five-Year Review

Pursuant to CERCLA section 121(c), DOE must conduct statutory CERCLA Five-Year Reviews for the OU II Non-Surface and Ground-Water Impacted Peripheral Properties because contamination remains at certain properties above levels that allow unlimited use or unrestricted exposure. These are the previously cited property MP–00211–VL, supplemental standards property MP–01041–VL, and supplemental standards properties such as MP–00180–CS where radiological contamination remains in city-owned street and utility rights-of-way. These properties all have land use restrictions in place. CERCLA Five-Year Reviews ensure the selected remedy remains effective.

The first CERCLA Five-Year Review for the Site was completed on February 13, 1997. This CERCLA Five-Year Review, covering the period from 1991 through 1996 when remediation was ongoing at the Site, discussed the status of remedial actions and noted that the need for supplemental standards for certain properties on the Site, including the OU II Non-Surface and Ground-Water Impacted Peripheral Properties, was being negotiated with EPA and UDEQ. The most recent CERCLA Five-Year Review, completed in August 2002, evaluated the completion of remediation of radioactive materials in soils and sediment for OUs I and II, the completion and capping of the repository located south of the Millsite, transferral of the Millsite to the City, and restoration of the Millsite. The next CERCLA Five-Year Review for the Site is scheduled for June 2007.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of the OU II Non-Surface and Ground-Water Impacted Peripheral Properties portion of the Site from the NPL are available to the public in the Site information repositories identified above.

V. Deletion Action

The EPA has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than operation and maintenance and five-year reviews, are necessary. Therefore, EPA is deleting the OU II Non-Surface and Ground-Water Impacted Peripheral Properties portion of the Site from the NPL. The State of Utah (UDEQ) concurs with the decision to delete the OU II Non-Surface and Ground-Water Impacted Peripheral Properties portion of the Site from the NPL provided that no adverse comments are received during the public comment period.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 14, 2003, unless EPA receives adverse comments by September 12, 2003. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final partial deletion before its effective date and the partial deletion will not take effect. In such case, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 31, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O.12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 2 of appendix B to part 300 is amended by revising the entry for ''Monticello Mill Tailings (USDOE),'' Monticello, UT to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes [a]
*	* * * * * *		*
UT	Monticello Mill Tailings (USDOE)	Monticello	P
*	* * * * * *		*

[a] * * *.
P = Site with partial deletion(s).

[FR Doc. 03–20430 Filed 8–12–03; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 156
Wednesday, August 13, 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

Agricultural Marketing Service

7 CFR Parts 91 and 96

[Docket Number ST02–03]

RIN 0581–AC18

Removal of Cottonseed Chemist Licensing Program, Updating of Commodity Laboratory and Office Addresses, and Adoption of Information Symbols

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to remove the cottonseed chemist licensing program and the related official grading program. This proposed regulation would update various commodity testing laboratory addresses and would adopt two information symbols in the form of approved AMS shields to indicate that products have been tested by AMS.

DATES: Comments must be received on or before September 12, 2003.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule. The Agency particularly invites ideas for adequate funding so that this 67-year-old USDA user fee program may become operational again if the cottonseed products industry shows renewed interest. Comments should be sent in triplicate to James V. Falk, Docket Manager, USDA, AMS, Science and Technology, 1400 Independence Avenue, SW., Room 3521 South Agriculture Building, Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov* and should refer to the docket title and number located in the heading of this document. Comments received will be available for public inspection in Room 3507, South Agriculture Building, 1400 Independence Avenue, SW., between the hours of 10 a.m. and 4 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Docket Manager, USDA, AMS, Science and Technology, 1400 Independence Avenue, SW., Room 3521 South Agriculture Building, Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Executive Order 12988

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Even though an official cottonseed grading certificate has not been issued since June 3, 1999, there are some potential users available that may use the cottonseed chemist licensing program services. Such possible users of program services include 35 oil mills, 1,400 U.S. cottonseed gins, 11 private laboratories, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601).

USDA licensed cottonseed chemist program service and official cottonseed grade determinations are provided to all businesses on a voluntary basis and user fees to administer the program are listed in 7 CFR part 96. Any decision to discontinue the use of the official cottonseed grading services (with a unit certificate fee) at private laboratories and obtain new contracts with their customers based upon unofficial grade of seed (without a fee) would not hinder the cottonseed industry members from marketing their products. Monthly published Marketing News reports for cottonseed are based entirely on summary information of the quality and quantity factors and grades obtained from all official certificates issued by licensed chemists. There has been no official cottonseed grade certificate issued from a licensed chemist since June 3, 1999. All cottonseed business since that date has been based on an unofficial cottonseed grade. User fee costs to entities would be proportional to their use of program services, so that costs are shared equitably by all users.

The last fee increases for the USDA Cottonseed Chemist Licensing Program services became effective on May 4, 1998 (63 FR 16370–16375). Since June 1999, no revenue has been available to administer the program and there has been a yearly increase in cost of living for the Federal employee salaries and benefits that comprise 72 percent of total program expenses. No program revenue is generated because there has been a shift in usage patterns on the part of the cottonseed industry for testing and grading services by chemists. The industry is now relying entirely on an unofficial cottonseed grade certification for their purchase and trade decisions.

Other miscellaneous and unsubstantial changes which would be made by the proposed rule will not adversely affect users of the program services. The addition of two information symbols in the form of approved AMS shields and their inclusion in the regulations would not add further costs to users of the variety of AMS Science and Technology laboratory testing services.

Accordingly, the Administrator has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain any new information collection or recordkeeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background and Analysis of Proposal

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity programs into the Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD). All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997.

The description of examination and licensure services provided in section 91.4 needs to be broadened to include other laboratory and testing licenses provided by the Science & Technology programs. In addition, if the proposed rule to remove the Cottonseed Chemist Licensing Program becomes finalized then the limited description of services would no longer be applicable. Science & Technology Program laboratories and facilities have undergone modernization and consolidation since May 1998. In many instances the addresses of the locations changed in section 91.5. A major change was the October 2002 opening of the National Science Laboratory in Gastonia, North Carolina which now has biotechnology testing facilities

On November 1, 1999 the USDA Office of Communications approved two information symbols in the form of AMS shields to be added to the USDA/AMS inventory and they are acceptable for use with AMS materials. The two approved AMS shields with the words ''USDA AMS TESTED'' and ''USDA LABORATORY TESTED FOR EXPORT'' are proposed to be added to the regulations in 7 CFR part 91. A major role of the Science and Technology program for the Agency is to perform analytical testing services of commodities. The approved AMS shields are designed to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

The licensed cottonseed chemist program and official grade certification are voluntary, user fee-funded services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624). Under the current USDA program, chemists in private laboratories are licensed to analyze cottonseed in order to certify its quality, to access its lot potential for oil yield at seed crushing mills, and to determine the grade of official samples of cottonseed produced at cotton gins according to the rules, regulations and By-Laws of the National Cottonseed Products Association (NCPA). A representative lot of cottonseed for official grade determination is generally limited to a maximum of 150 tons for quality concerns. An official certificate is issued by the licensed chemist for each official cottonseed sample at a current unit fee of $3.18 to cover the costs of the USDA program.

The USDA licensed cottonseed chemist program originated on July 31, 1937 when a Bureau of the United States Department of Agriculture published a rule in the **Federal Register** (2 FR 1348–1353) and provided the details for the program. On August 14, 1937 the first user fee increase for the program occurred when the issuance cost for each certificate of the official grade of cottonseed increased from 10 cents to 25 cents (2 FR 1400).

The regulations in 7 CFR part 96 include in subpart A the details of the USDA cottonseed chemist licensing program (under the AMS Cotton Division's supervision for the last time in 1988) and the applicable user fees. In subpart B the method used to calculate official cottonseed grade was provided.

The current fees have been in effect since May 4, 1998 (63 FR 16370–16375). The fees include $1,166 for a chemist's license examination, $292 for a chemist's license renewal, a $3.18 fee per official cottonseed grade certificate issued, and a $60 fee for the review of the grading of an official lot of cottonseed. The number of official cottonseed grade certificates issued by licensed chemists dropped from 36,565 in fiscal year 1992 to 5,718 in early fiscal year 1999. The large decline in official cottonseed grade certificates was due to the 40 percent divergence of cottonseed usage from human food to dairy animal feed. In addition, many large oil mills have setup their own laboratories to perform cottonseed quality testing and have established trade relations with their customers based on an unofficial grade of seed.

The S&T programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Department to provide analytical testing services that facilitate marketing and allow commodity products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for the agricultural commodities. The Act also requires that reasonable and reimbursable fees be collected from users of the program services to cover, as nearly as practicable, the costs of the services rendered to maintain the program. At a May 1999 annual meeting, the National Cottonseed Products Association was provided an analysis of the services the Agency provides for the official cottonseed grade determination, and the revisions of fees that are needed to continue services to the extent commensurate with the actual costs. The industry expressed strong resistance to paying the increased costs needed to provide the official cottonseed grading service that includes official sampling expenses. It was their recommendation to eliminate the cottonseed chemist licensing program. In June 1999 the last official cottonseed grade certificate was issued and no revenue has been obtained from the USDA cottonseed chemist licensing program since that time to the present. The program has become a financial burden to AMS. The total obligatory cost to Science and Technology to carry the program forward to the full completion of fiscal year (FY) 2003 would be $65,939. The estimated cost of the program for FY 2004 would remain at $65,939. This cost consists of $47,786 for salaries and benefits, $2,480 for USDA blind check sample preparation, $7,101 for travel, $3,575 for rent/utilities/communications, and $4,997 for administrative overhead. The Agency has no projected revenue to continue the program operation using the current user fee schedule. Hence, this rule proposes to terminate the cottonseed chemist licensing program and to remove related official cottonseed grading and associated fees from the regulations. This rule proposes to remove 7 CFR part 96 in its entirety. Private or non-government laboratories would no longer be eligible to hold USDA cottonseed chemist licenses. There will be no need for persons to possess official cottonseed sampler licenses or similar designations. Marketing News for official grade cottonseed would no longer be available.

This proposed rule would also update various commodity testing laboratory addresses and would adopt approved AMS shields to indicate that products have been tested by AMS. The new shields would be placed in a new subpart together with appropriate definitions.

This proposed rule provides for a 30-day comment period. This period is deemed appropriate in view of the need to make changes to the regulations as soon as possible. All comments which are received during the comment period will be considered before making any

final decision about the continuance or the discontinuance of official cottonseed grading and the related USDA Cottonseed Chemist Licensing Program.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 91 is amended as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In § 91.4, paragraph (b) is revised to read as follows:

§ 91.4 Kinds of services.

* * * * *

(b) Examination and licensure. The manager of a particular Science and Technology program administers examinations and licenses analysts in laboratories for competency in performing commodity testing services.

* * * * *

3. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology field service laboratories and facilities in the following list:

(1) *Science and Technology regional laboratory.* A variety of tests and laboratory analyses are available in one regional multi-disciplinary Science and Technology (S&T) laboratory, and is located as follows: USDA, AMS, Science and Technology, National Science Laboratory, 801 Summit Crossing Place, Suite B, Gastonia, NC 28054–2193.

(2) *Science and Technology (S&T) satellite laboratories.* The specialty laboratories performing mycotoxin and other chemical testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities as well as proximate analyses on foods are:

(i) USDA, AMS, Science & Technology, 959 North Main Street, Blakely, GA 39823–2030.

(ii) USDA, AMS, Science & Technology, 107 South Fourth Street, Madill, OK 73446–3431.

(iii) USDA, AMS, Science & Technology, c/o Golden Peanut Company LLC, (Mail: P.O. Box 272; Dawson, GA 31742–0272), 715 Martin Luther King Jr. Drive, Dawson, GA 39842–1002.

(iv) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434–4706.

(3) *Citrus laboratory.* The Science and Technology's citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, Science & Technology Citrus Laboratory, 98 Third Street, SW., Winter Haven, FL 33880–2905.

(4) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered into on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) *Science and Technology headquarters offices.* The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follows: USDA, AMS, Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *The Information Technology (IT) Group.* The IT office of the Science and Technology programs is headed by the Associate Deputy Administrator for Technology/Chief Information Officer and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follows: USDA, AMS, Science and Technology, Office of the Associate Deputy Administrator for Technology, 1752 South Agriculture Bldg., Mail Stop 0204, 1400 Independence Ave., SW., Washington, DC 20250–0204.

(8) *Statistics Branch Office.* The Statistics Branch office of Science and Technology (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(9) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and accreditation services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch office is located as follows: USDA, AMS, S&T Technical Services Branch, 3521 South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272.

(10) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and Technology Monitoring Programs Office (MDP and PDP), 8609 Sudley Road, Suite 206, Manassas, VA 20119–8411.

(11) *Federal Pesticide Record Keeping Program Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411. The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725 South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

4. A new subpart J is added to read as follows:

Subpart J—Designation of Approved Symbols for Identification of Commodities Officially Tested by AMS

Sec.
91.100 Scope.
91.101 Definitions.
91.102 Form of official identification symbols.

§ 91.100 Scope.

Two approved information symbols in the form of AMS shields are available to indicate official testing by an AMS laboratory. The two approved AMS shields with the words ''USDA AMS TESTED'' and ''USDA LABORATORY TESTED FOR EXPORT'' are added to the USDA symbol inventory to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

§ 91.101 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

AMS. The abbreviation for the Agricultural Marketing Service (AMS) agency of the United States Department of Agriculture.

Export. To send or transport a product originally created or manufactured in the United States of America to another country in the course of trade.

Laboratory. An AMS Science and Technology (S&T) laboratory listed in § 91.5 that performs the official analyses.

Test. To perform chemical, microbiological, or physical analyses on a sample to determine presence and levels or amounts of a substance or living organism of interest.

USDA. The abbreviation for the United States Department of Agriculture.

§ 91.102 Form of official identification symbols.

Two information symbols in the form of AMS shields indicate commodity testing at an AMS laboratory listed in § 91.5 of this part. The AMS shield set forth in figure 1 of this section, containing the words ''USDA AMS TESTED'', and the shield set forth in figure 2, containing the words ''USDA LABORATORY TESTED FOR EXPORT'' have been approved by the USDA Office of Communications to be added to the USDA/AMS inventory of symbols. Each example of an AMS shield has a black and white background; however the standard red, white and blue colors are approved for the shields. They are approved for use with AMS materials. Shields with the same wording that are similar in form and design to the examples in figures 1 and 2 of this section may also be used.

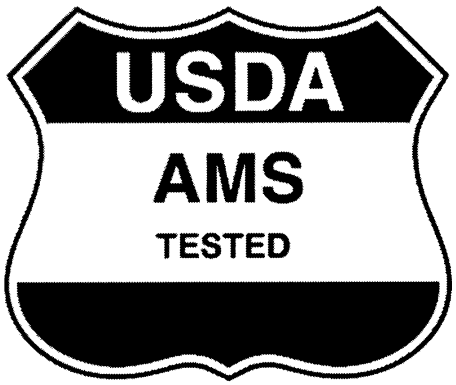

Figure 1.

Figure 2.

PART 96—[REMOVED AND RESERVED]

4. Part 96 is removed and reserved.

Dated: August 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20563 Filed 8–12–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacers, part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. This proposed AD would reduce the life limit for 1st to 2nd stage turbine spacer, part number (P/N) 23072849, to a certain lower life limit, based on engine model. This proposed AD would also require a one-time fluorescent penetrant inspection (FPI) of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified cycles-since-new (CSN), and would require replacement of the spacer if found cracked, or with bent or missing aft tangs. This proposed AD is prompted by a report that during a scheduled inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found bent and cracked. The actions specified in this proposed AD are intended to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 14, 2003.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–19–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7870, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–19–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The FAA has been made aware that during a scheduled engine inspection, aft pilot tangs on a 1st to 2nd stage turbine spacer were found cracked and bent. The manufacturer has determined that the cause of the cracking and bending is due to a tight interference fit between the 2nd stage high pressure turbine wheel and the 1st to 2nd stage turbine spacer, and a fillet radius on the aft tangs, that is too small. The manufacturer is making design changes to decrease the interference fit of a replacement 1st to 2nd stage turbine spacer. The manufacturer has reduced the original life limit for spacer part number 23072849. The manufacturer is also requesting FPI of this spacer P/N 23072849 and three other related spacers P/Ns 23069627, 23070989, and 23075364. This action is considered interim and future AD action may be taken based on inspection results and replacement part availability.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would reduce the 20,000 CSN life limit for the replacement 1st to 2nd stage turbine spacer, P/N 23072849, to 13,100 CSN for engine models AE 3007A1/1, AE 3007A1/3, AE 3007A1, and AE 3007A3, and to 12,900 CSN for engine models AE 3007A1E and AE 3007A1P. This proposed AD would also require a one-time FPI of 1st to 2nd stage turbine spacers P/Ns 23069627, 23070989, 23072849, and 23075364 before reaching the spacer life limit, within specified CSN, and would require replacement of spacers if found cracked, or with bent or missing aft tangs.

Changes to 14 CFR Part 39—Effect on the Proposed AD

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

Costs of Compliance

There are approximately 1,244 engines of the affected design in the worldwide fleet. We estimate that 850 engines installed on airplanes of U.S.

registry would be affected by this proposed AD. We estimate the prorated replacement cost of a spacer for engine models AE 3007A1/1, AE 3007A1/3, AE 3007A1, and AE 3007A3 to be $13,755, and $13,545 for engine models AE 3007A1E and AE 3007A1P. We also estimate that approximately 45%, or 382, of the 850 domestic engines will require replacement spacers. We also estimate that it would take approximately 1 work hour per engine to perform the proposed inspection, and that the average labor rate is $60 per work hour. We also estimate that it would take approximately 18 work hours per engine to perform the proposed part replacement. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $5,649,780.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–19–AD'' in your request.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Corporation: Docket No. 2003–NE–19–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 14, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007A1, AE 3007A1/1, AE 3007A1/3, AE 3007A3, AE 3007A1E, and AE 3007A1P turbofan engines, with 1st to 2nd stage turbine spacer part number (P/N) 23069627, 23070989, 23072849, or 23075364 installed. These engines are installed on, but not limited to, EMBRAER EMB–135 and EMB–145 series airplanes.

Unsafe Condition

(d) This AD was prompted by a report that during a scheduled inspection, aft pilot tangs were found bent and cracked on a 1st to 2nd stage turbine spacer. The actions specified in this AD are intended to prevent 1st to 2nd stage turbine spacer failure, leading to uncontained turbine failure, engine shutdown, and damage to the airplane.

Compliance

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

1st to 2nd Stage Turbine Spacer Life Limits

(f) 1st to 2nd stage turbine spacer life limits are as follows:

(1) For P/N 23072849, the newly established life limit is:

(i) 13,100 cycles-since-new (CSN) for engine models AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A3; and

(ii) 12,900 CSN for engine models AE 3007A1E and AE 3007A1P.

(2) For P/Ns 23069627, 23070989, and 23075364, the life limits are unchanged.

Inspection

(g) After the effective date of this AD, perform a one-time fluorescent penetrant inspection (FPI) of the 1st to 2nd stage turbine spacer P/Ns 23069627, 23070989, 23072849, and 23075364 and replace spacer if cracked or if aft pilot tangs are bent or missing, with a new or serviceable 1st to 2nd stage turbine spacer, using the following compliance criteria:

(1) For an engine inducted into the shop for any reason, if the spacer has accumulated 3,000 CSN or more.

(2) For installed engines, if the spacer has accumulated more than 9,300 CSN, inspect before accumulating an additional 500 cycles-in-service, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

(3) For installed engines, if the spacer has accumulated 9,300 or less CSN, inspect before accumulating 9,800 CSN, or before accumulating 4,200 cycles-since-last FPI, whichever is more, but do not exceed the spacer life limit in paragraph (f) of this AD.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Chicago Aircraft Certification Office, FAA.

Related Information

(i) The subject of this AD is addressed in Rolls-Royce Corporation alert service bulletin No. AE 3007A–A–72–265, Revision 1, dated April 10, 2003.

Issued in Burlington, Massachusetts, on August 7, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–20573 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 103

RIN 1515–AD18

Confidentiality Protection for Vessel Cargo Manifest Information

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) published in the **Federal Register** by the U.S. Customs Service (now a bureau within the new Department of Homeland Security and renamed the Bureau of Customs and Border Protection (CBP)) on January 9, 2003, regarding the confidential treatment of certain vessel manifest information. The NPRM proposed to provide that, in addition to the importer or consignee, parties that electronically transmit vessel cargo manifest information directly to CBP 24 or more hours before cargo is laden aboard the vessel at the foreign port may request confidentiality with respect to importer or consignee identification information. Current regulations allow only the importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, to make such requests. After careful consideration, CBP has decided to withdraw the proposal because of the

clear lack of consensus on the part of the trade community regarding the value of the proposed amendment and the administrative burden the proposal, if adopted, would create for CBP and U.S. importers.

EFFECTIVE DATE: The effective date of this withdrawal is August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Disclosure Law Branch, OR&R, (202) 572–8717, and Glen Vereb, Chief, Entry Procedures & Carriers Branch, Office of Regulations and Rulings (OR&R), at (202) 572–8724.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2003, the U.S. Customs Service (now a bureau within the new Department of Homeland Security and renamed the Bureau of Customs and Border Protection (CBP)) published a notice of proposed rulemaking (the NPRM) in the **Federal Register** (68 FR 1173) proposing to amend § 103.31 of the Customs Regulations (19 CFR 103.31) pertaining to public disclosure of vessel manifest information and the confidential treatment of some of that information for importers and consignees. Under § 103.31(d)(1), an importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, can file a request for confidentiality (referred to as a certification in the regulation) relative to the name and address of the importer or consignee and the name and address of its shippers. The proposed regulation would allow, in certain circumstances, certain carriers handling the importer's or consignee's shipments, if properly authorized, to also file a confidentiality request on behalf of the importer or consignee.

This document withdraws the NPRM.

Prior Relevant Rulemaking and the NPRM

On October 31, 2002, CBP published a final rule document in the **Federal Register** (67 FR 66318) that amended the Customs Regulations pertaining to the inward foreign manifest to provide that CBP must receive from the carrier the vessel's Cargo Declaration (Customs Form (CF) 1302), one document among a few that comprise the manifest, or a CBP-approved electronic equivalent of the cargo declaration, at least 24 hours before the cargo is laden aboard the vessel at the foreign port, and to require that Vessel Automated Manifest System (AMS) participants provide the cargo declaration electronically.

The regulation also provides that a properly licensed or registered non-vessel operating common carrier (NVOCC) that is in possession of an International Carrier Bond containing the provisions of § 113.64 of the regulations (19 CFR 113.64) may electronically transmit required manifest information directly to CBP through the AMS 24 or more hours before cargo it delivers to the vessel carrier is laden aboard the vessel at the foreign port. If the NVOCC chooses not to transmit the required manifest information to CBP, as described above, the regulation requires the NVOCC to instead fully disclose and present the required information to the vessel carrier to allow the vessel carrier to present the information to CBP via the AMS system (see 19 CFR 4.7(b)(3)). (The manifest information filing procedure of § 4.7(b) is sometimes referred to in this document as the ''24-hour rule.'')

The final rule document (in the preamble discussion) also noted the NVOCC community's concern that certain information and data that a NVOCC would supply under the procedures of the ''24-hour rule'' would be subject to release for publication under 19 U.S.C. 1431 (section 1431) and § 103.31 of the Customs Regulations. The NVOCC group contended that such release would reveal confidential business information that could result in harm to the NVOCC community.

To respond to this concern, CBP indicated that it would publish another NPRM for the purpose of seeking further input from the trade regarding the value of amending § 103.31 to allow NVOCCs and vessel operating common carriers (ocean carriers) filing manifest information in accordance with the ''24-hour rule'' to request confidentiality under the regulation on behalf of importers and consignees. At the same time, the agency began considering whether section 1431 might accommodate expanding the parties who can file a confidentiality request on behalf of an importer or consignee. The result was publication of the January 9, 2003, NPRM and its request for public comment.

The Statute and the Regulation

At the heart of the NPRM were the provisions of section 1431 regarding public disclosure and confidential treatment of vessel manifest information. Under section 1431(c)(1), certain vessel manifest information must be made available for public disclosure, including, among other things, the name and address of each importer and consignee, the name and address of the importer's or consignee's shipper, the general character of the cargo, the name of the vessel or carrier, and the country of origin of the shipment. Under section 1431(c)(1)(A), the importer or consignee may request that its name and address and the name and address of its shipper be kept confidential by filing a biennial certification in accordance with regulations adopted by CBP. Under § 103.31(a) of the Customs Regulations (19 CFR 103.31(a)), vessel manifest information must be made available, under rules set forth in the regulation, to accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications. As stated previously, under § 103.31(d), an importer or consignee, or an authorized employee, attorney or official of the importer or consignee, may request confidentiality relative to the importer's or consignee's name and address, and the name and address of its shippers, by filing a request with CBP every two years.

The statute and regulation thus require that certain manifest information be made available to the public and, at the same time, that importers and consignees be permitted to keep their identity confidential, along with that of their shippers, should they so choose. In passing section 1431, Congress struck a balance between freedom of information (the requirement to release/disclose manifest information) and fair competition (the right to request confidentiality of certain information by importers and consignees) (hereinafter referred to as the ''freedom of information—confidentiality balance''). Many in the trade community and related businesses benefit from the availability of manifest information, and some importers and consignees utilize the confidentiality provision to protect their competitive posture. Regarding this balance, it is noted that Congress stated that ''greater disclosure of manifest information will facilitate better public analysis of import trends, and allow port authorities and transportation companies, among others, more easily to identify potential customers and changes in their industries.'' (S. Rep. No. 308, 98th Cong., 1st Sess. 30 (1983), *reprinted in* 1984 U.S.C.C.A.N. 4910, 4939.) Congress further stated that section 1431 ''retains sufficient protection for business-confidential data of importing firms, while encouraging greater competition among those in the import-servicing trades.'' *Id.*

Discussion of Comments

A total of 60 comments were submitted in response to the NPRM. A substantial majority of the comments were opposed to amending § 103.31 as

the NPRM proposed, and most of the minority in favor of the proposal indicated that it did not go far enough and recommended ways to improve it.

Comments in Favor of the Proposed Amendment

Eight of the 60 commenters favored adoption of the amendment proposed in the NPRM. These commenters include organizations representing customs brokers, freight forwarders, NVOCCs, importers, exporters, and/or retailers, and one organization representing producers and marketers of distilled spirits. All of these commenters favored adoption of the proposal, claiming that it would protect from disclosure what they consider commercially sensitive business confidential information submitted in accordance with the ''24-hour rule.'' These commenters contended that release of this information will harm their competitive posture, expose their and their customers' shipments to a greater risk of theft, and pose a terrorist security threat to the nation. They pointed out that their information was not subject to disclosure prior to promulgation of the ''24-hour rule'' and contended that the ''24-hour rule's'' implementation, which they do not oppose, should not impose this negative impact on their businesses.

Despite their support for the proposed amendment, most of these commenters indicated their dissatisfaction with the particulars of the proposal and recommended several ways to improve it, variously including:

(1) dropping the documentation requirement (power of attorney and/or letter of authorization) applicable to the additional parties that could request confidentiality under the proposed regulation, on the grounds it is time consuming and onerous for importers/consignees to produce it and for the additional parties (NVOCCs and ocean carriers) to manage and submit it (many commenters, both for and against, were unsure whether the proposed regulation, which requires that the importer/consignee designate the NVOCC or ocean carrier as its attorney-in-fact, requires a power of attorney);

(2) allowing the additional parties filing confidentiality requests under the proposed regulation to retain the required documentation in their records rather than submit it with the confidentiality request;

(3) adding a general exclusion from the disclosure requirement for any information relative to FROB (Freight Remaining on Board) merchandise;

(4) allowing all NVOCCs to request confidentiality, whether or not they are licensed or registered with the Federal Maritime Commission or they have the capacity to file information electronically;

(5) providing that a general grant of confidentiality apply to all information submitted by NVOCCs and ocean carriers under the ''24-hour rule,'' not just importer/consignee identification information; and

(6) improving the process by reducing the incidence of erroneous disclosures and eliminating the biennial filing requirement.

Comments in Opposition to the Proposed Amendment

Fifty-two of the 60 commenters opposed adoption of the amendment proposed in the NPRM. These commenters include: U.S. manufacturers, producers, and importers; a publisher of trade information; a United States Attorney, Department of Justice; ocean carriers and shipping companies; market researchers and consultants; trade associations; port authorities; local and regional economic and business development organizations; offshore suppliers; and a U.S. Congressman. From their comments, several significant reasons for opposition to the proposed amendment emerged. Because of the number of individual comments opposing the proposal, they are consolidated and presented below according to subject.

The Proposed Amendment Goes Beyond the Terms of the Statute and Is Contrary to Congressional Policy

Many of the commenters opposing the proposed amendment contended that: (1) The proposed expansion of the parties authorized to request confidentiality under the regulation strains the language of the statute and the intent of Congress and (2) this expansion would wrongly upset the ''freedom of information—confidentiality balance'' provided for under section 1431.

These commenters stated that allowing additional parties to request confidentiality under the regulation would lead to the filing of more requests and a corresponding reduction of available information. Also, according to these commenters, most or perhaps all of these additional requests would be authorized by importers or consignees who otherwise would not make the request of their own volition; instead, the NVOCCs and ocean carriers allowed to request confidentiality under the proposed regulation would seek authorization, for their own reasons, from their importer and consignee clients to file the confidentiality requests. Thus, these commenters stated, access to information would be blocked, to the detriment of those who rely on that information, while the purpose of section 1431—excluding from disclosure the identities of importers and consignees for *their* protection—would not be served.

The Proposed Amendment Is Not Necessary

Many commenters contended that there is no need to amend the regulation. This contention has two parts. The first asserts that there is no need to amend the regulation because the ''disclosure-confidentiality process'' that is now in place under the statute and the regulation works well for both the trade community that utilizes the information and the importers and consignees who may request confidentiality if they so desire. These commenters repeatedly stated that the current law strikes the right balance between freedom of information and confidentiality. In this regard, these commenters pointed out that the NPRM did not identify a single problem, difficulty, or impediment facing importers or consignees under the current system that might warrant a fix to further the intent of the law.

The second part of the contention questioned the NVOCC community's claim to need protection from harm that would result from disclosure of the manifest information for which it now seeks to request confidentiality. These commenters pointed out that, for many years, under the current system, ocean carriers have not suffered harm requiring remedy despite the fact that they have not had the right to request confidentiality on behalf of their importer or consignee clients. They thus questioned the contention that a level of harm requiring remedy would result upon the release of that same manifest information submitted by NVOCCs authorized to file confidentiality requests under the proposed amendment.

The Proposed Amendment Harms Those Entities That Utilize Publicly Available Trade Information

Many commenters in opposition cited the broad extent of the harm that the proposed amendment would inflict on those many elements of the trade and related communities that utilize the disclosed manifest information for a wide variety of reasons. A long list of users of and uses for the information emerged from the comments. Some of the users are: Trade associations and other advocates for U.S. manufacturers/producers, importers, and exporters;

port authorities; advocates for local, state, and regional economic and business development; carriers and others involved in shipping and shipping related businesses; a publisher of trade information; a market researcher and consultant; and law enforcement entities. Some of the uses are to: identify overseas markets; locate overseas suppliers; attract and develop customers; promote increased international trade and resulting economic growth; plan port expansion and development; compete with other ports for business; compile trade information to advise/assist business and trade clients; and enforce laws concerning counterfeit trademarks and unlawful foreign competition.

These commenters asserted that allowing additional parties to request confidentiality for importers and consignees, and the corresponding reduction of available information caused by this expansion, would result in serious harm to their competitive advantage and damage or ruin their businesses. These commenters asserted that CBP should not limit its evaluation of the matter to the harm that the NVOCC community alleges it would suffer, but should also consider the negative impact the change would have on other elements of the trade community.

Operational Burdens

A few commenters objected to the proposal on grounds that it would impose additional operational burdens on all parties and would result in a more bureaucratic and less efficient system. First, the NVOCC or ocean carrier would have to contact its importer and consignee clients to solicit the authorizations, requiring a considerable effort and a major document management task. The importers and consignees would have to prepare a power of attorney (or other document for attorney-in-fact designation) and a letter of authorization for a NVOCC or ocean carrier seeking to file a confidentiality request on their behalf, something they do not have to do under the current regulation. A few commenters asked if a set of such documents would have to be prepared for each NVOCC or carrier seeking authorization and if confidentiality would then be applied on a shipment-by-shipment basis or on a NVOCC/carrier-by-NVOCC/carrier basis.

Second, the NVOCC or ocean carrier would then have to submit the request along with the authorization letter to CBP, a more onerous task than merely submitting a request in the manner the current procedure provides. Several asked whether a power of attorney would have to be submitted with the request and authorization letter. Others asked about recordkeeping requirements.

Third, these commenters indicated that the burden on CBP also would increase significantly in verifying and tracking authorizations and requests, suggesting creation of a more bureaucratic system with a more complicated document management component. Some asked how multiple requests (from different NVOCCs or carriers) for the same importer or consignee would be handled. Even if only one request per importer or consignee were required, which is not clear under the proposed regulation, CBP would have to determine if a request had already been filed on behalf of an importer/consignee each time it received a request for an importer/consignee. Also, if requests were not accompanied by the required document(s), CBP would have to request the document(s) or send the certification back to the filer, holding acceptance and processing of the certification in abeyance. If questions were raised about the legitimacy or details of the authorization letter or the power of attorney (or other document), if required and submitted, CBP would have to make inquiries.

The Proposed Amendment Poses a Security Risk

Another reason for opposition to the proposed amendment mentioned by a few commenters was the matter of security. Some contended that curtailing the quantity of available information would harm local, state, and federal security and law enforcement interests. Some stated that the fact that the information is not disclosed until after a shipment has arrived and been processed/released does not mean that the information would lack value. Meaningful investigative information could be gleaned after the fact, revealing patterns or past conduct that could be helpful in law enforcement or anti-terrorism security initiatives. One commenter's letter included a letter from a U.S. Attorney whose access to trade information assisted his office in obtaining convictions for a smuggling related crime.

Business Practices Adjustment

Several commenters in opposition complained that altering the disclosure/confidentiality process under the regulation would require further adjustments by those involved in the import and import servicing trades. For example, one commenter stated that changing the content of information disclosed would result in an unfavorable change to its business practices and a negative impact on its bottom line.

CBP's Determination

After reviewing the comments, and upon further consideration of the matter, CBP has determined to withdraw the proposal. It is apparent that most of those who favored the idea behind the proposed regulation nevertheless believe that the regulation, as drafted, does not go nearly far enough; however, the plain language of the statute will not allow CBP to go nearly as far as they would prefer. Those who objected to the proposed regulation believe that it went much too far and that the status quo was preferable for many reasons. Thus, because such a substantial majority of the commenters did not favor the actual proposed regulation and the comments revealed such a strong split within the trade community, CBP has decided not to engage in any rulemaking activity in this area for these reasons and the reasons explained below.

CBP agrees with those commenters who stated that adoption of the proposed amendment would result in an increase in the number of confidentiality requests made under the regulation. CBP acknowledges that most of that increase would likely result from the solicitation of importer and consignee authorizations by NVOCCs and carriers allowed to make the request under the proposed regulation. In a recent month since publication of the NPRM, although certainly premature, one quarter of the confidentiality requests CBP received were made by NVOCCs on behalf of their importer/consignee clients. If the proposed amendment were adopted, the increase in the volume of confidentiality requests would, to a corresponding extent, result in less available information for those segments of the trade community that utilize and rely on that information. This, in turn, raises a legitimate question as to whether the proposal would have a deleterious impact on the ''freedom of information—confidentiality balance'' that the statute provides.

Regarding the terms of the statute, because most of the additional requests would be made on behalf of importers and consignees who might not otherwise make the request of their own volition, CBP has had to consider whether the proposed amendment would serve the interests of parties not intended to be beneficiaries of the law,

i.e., NVOCCs and ocean carriers handling the importer's/consignee's shipments. CBP agrees that the statute is designed to protect the identities of importers and consignees (and their shippers if desired) for reasons that are related to their own competitive well being, not for reasons related to the competitive well being of the NVOCCs and ocean carriers filing manifest information in accordance with the ''24-hour rule.''

Thus, upon review of the comments and further review of the matter, CBP recognizes that allowing these other parties to file confidentiality requests for their importer and consignee clients will not further the intent of the law's confidentiality provision to protect the interests of the importers/consignees, but will instead serve the interests of these other parties at the expense of users of manifest information whose interest this law is also intended to serve. Importers and consignees *already* enjoy the benefits of this law through the current regulation, which allows confidentiality requests to be made by their authorized employees, attorneys, or officials.

Moreover, CBP is further persuaded by several of the other comments opposing the proposed amendment and submits that the weight of these other comments, taken together, provides additional support for a decision to abandon the NPRM. Primary among these other reasons against adoption of the proposal are that the proposal, if adopted, would cause some degree of harm to certain elements of the trade community without producing a beneficial impact on the law's beneficiaries or achieving a result mandated by law; the proposal would create an unacceptable operational burden on CBP; and it would create additional operational burdens on all involved parties, including the importers and consignees who may request confidentiality under the current regulation without preparing a power of attorney or authorization letter. Also, the proposed amendment raised a number of significant questions, as made clear by the comments for and against, and as discovered by CBP during its further review of the matter, indicating that amending the process as proposed is more complicated and problematic than initially contemplated. This recommends to an additional extent abandonment of the project.

In summary, it is clear that there is no consensus among members of the trade community on the value of adopting the proposed regulation and that the greater weight of the comments is persuasively against adoption. Also, the proposed regulation, if adopted, would have presented a considerable challenge to administrative efficiency for both CBP and importers and consignees.

Dated: August 7, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20567 Filed 8–12–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209377–89]

RIN 1545–BA69

At-Risk Limitations; Interest Other Than That of a Creditor; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person related to a person (other than the borrower) with such an interest.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 465 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations REG–209377–89, contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations REG–209377–89, which is the subject of FR Doc. 03–17090, is corrected as follows:

1. On page 40583, column 3, in the preamble, under the paragraph heading **FOR FURTHER INFORMATION CONTACT** paragraph 1, lines 4 and 5, the language ''requests for a public hearing, [Insert Name], 202–622–7180 (not toll-free'' is corrected to read ''requests for a public hearing, Sonya Cruse, 202–622–4693 (not toll-free''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–20666 Filed 8–12–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7542–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to partially delete the Monticello Mill Tailings (USDOE) Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a notice of intent to partially delete the Monticello Mill Tailings (USDOE) Superfund Site (the Site) located in Monticello, Utah, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund. The State of Utah, through the Utah Department of Environmental Quality (UDEQ), concurs with the decision for partial deletion of the Site from the NPL provided that no adverse comments are received during the public comment period.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of partial deletion of the Site without prior notice of intent to partially delete because we view this as a noncontroversial revision and anticipate no adverse comments. We have explained our reasons for this partial deletion in the preamble to the direct final partial deletion. If we receive no adverse comments on this notice of intent to partially delete or the direct

final notice of partial deletion, we will not take further action on this notice of intent to partially delete. If we receive adverse comments, we will withdraw the direct final notice of partial deletion and it will not take effect. In such case, we will, as appropriate, address all public comments in a subsequent final partial deletion notice based on this notice of intent to partially delete. We will not institute a second comment period on this notice of intent to partially delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of partial deletion which is located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 12, 2003.

ADDRESSES: Written comments should be addressed to: Mr. Paul Mushovic (8EPR–F), Remedial Project Manager, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, *mushovic.paul@epa.gov,* (303) 312–6662 or 1–800–227–8917.

FOR FURTHER INFORMATION CONTACT: For information regarding Site deletion, contact Mr. Paul Mushovic (8EPR–F), Remedial Project Manager, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, *mushovic.paul@epa.gov,* (303) 312–6662 or 1–800–227–8917. For other general Site information, contact Mr. Art Kleinrath, Program Manager, U.S. Department of Energy (DOE), 2597 B ¾ Road, Grand Junction, Colorado 81503, *art.kleinrath@gjo.doe.gov,* (970) 248–6037, or Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Partial Deletion which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. DOE Grand Junction Office Public Reading Room, 2597 B ¾ Road, Grand Junction, Colorado 81503, (970) 248–6089, Monday through Friday 7:30 a.m. to 4 p.m.; U.S. DOE Repository Site Office, 7031 South Highway 191, Monticello, Utah 84535, (435) 587–2098, Monday through Friday 8 a.m. to 5 p.m., or by appointment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 31, 2003.

Robert E. Roberts,

Regional Administrator, U.S. EPA Region 8.

[FR Doc. 03–20431 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[STB Ex Parte No. 647]

Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) has received a proposal to create a class exemption under 49 U.S.C. 10502 for Class II and Class III railroads from the prior approval abandonment requirements of 49 U.S.C. 10903. The Board intends to consider this proposal, and any other matters that interested persons may raise regarding the abandonment process generally, at an oral hearing to be held in the fall of this year. The Board is not seeking public comment at this time but will issue a subsequent notice setting forth the details for filing comments and participating in the Board's hearing.

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: On May 15, 2003, sixty-five regional and short-line carriers [1] (petitioners) filed a petition before the Board to use its exemption authority under 49 U.S.C. 10502. Petitioners ask the Board to adopt a new class exemption for use by small carriers in abandoning rail lines. Petitioners claim that the proposal would eliminate current regulatory incentives for small carriers to delay abandonment while letting the traffic base and physical condition of low-density lines deteriorate; subject exit and entry to the rail industry to market forces; and increase the dissemination of commercial information to facilitate the offer of financial assistance (OFA) procedures. In addition, petitioners claim that the proposal would reduce the administrative burdens on the Board.

The proposal would allow small carriers to file a notice of exemption whenever they make the business decision that a given line was no longer economically viable. Petitioners argue that their proposal would eliminate delays in the abandonment process and allow small carriers to quickly redeploy limited assets. This, petitioners maintain, would facilitate maintenance and infrastructure upgrades necessary for small carriers to continue in operation.

The proposed notices of exemption would include 36-months of traffic and revenue information, a description of the current physical condition of the line, an estimate of rehabilitation, the

[1] The sixty-five carriers are: Allegheny & Eastern Railroad, Inc.; Bradford Industrial Rail, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Carolina Coastal Railway, Inc.; Commonwealth Railway, Inc.; Chicago SouthShore & South Bend Railroad; Chattahoochee & Gulf Railroad Co., Inc.; Connecuh Valley Railroad Co., Inc.; Corpus Christi Terminal Railroad, Inc.; The Dansville & Mount Morris Railroad Company; Eastern Idaho Railroad, Inc.; Genesee & Wyoming Railroad Company; Golden Isles Terminal Railroad, Inc.; H&S Railroad Co., Inc.; Illinois Indiana Development Company, LLC; Illinois & Midland Railroad Company, Inc.; Kansas & Oklahoma Railroad, Inc.; Knoxville & Holston River Railroad Co., Inc.; Lancaster and Chester Railway Company; Laurinburg & Southern Railroad Co., Inc.; Louisiana & Delta Railroad, Inc.; Louisville & Indiana Railroad Company; Minnesota Prairie Line, Inc.; Montana Rail Link, Inc.; New York & Atlantic Railway Company; Pacific Harbor Line, Inc.; Palouse River & Coulee City Railroad, Inc.; Pennsylvania Southwestern Railroad, Inc.; Piedmont & Atlantic Railroad Inc.; Pittsburgh & Shawmut Railroad, Inc.; Portland & Western Railroad, Inc.; Rochester & Southern Railroad, Inc.; Rocky Mount & Western Railroad Co., Inc.; St. Lawrence & Atlantic Railroad Company; Salt Lake City Southern Railroad Company; Savannah Port Terminal Railroad, Inc.; South Buffalo Railway Company; South Kansas & Oklahoma Railroad Company; Stillwater Central Railroad; Talleyrand Terminal Railroad, Inc.; Three Notch Railroad Co., Inc.; Timber Rock Railroad, Inc.; Twin Cities & Western Railroad Company; Utah Railway Company; Willamette & Pacific Railroad, Inc.; Wiregrass Central Railroad Company, Inc.; York Railway Company; AN Railway, LLC; Atlantic and Western Railway, Limited Partnership; Bay Line Railroad, LLC; Central Midland Railway; Copper Basin Railway, Inc.; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; The Indiana Rail Road Company; KWT Railway, Inc.; Little Rock & Western Railway, L.P.; M & B Railroad, L.L.C.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; Western Kentucky Railway, LLC; Wheeling & Lake Erie Railway Company; Wilmington Terminal Railroad, L.P.; and Yolo Shortline Railroad Company.

carrier's calculation of the line's net liquidation value (NLV), the names of connecting carriers and the points of interchange. The abandoning carrier would publish this information for three consecutive weeks in local newspapers and in nationally-distributed, railroad trade publications. A potential purchaser could review the data underlying the published information and the abandoning carrier would be required to provide such information within 5 days.

Petitioners' proposal would require carriers availing themselves of the class exemption to stipulate that any OFA sale would be at NLV and would forgo any claim of a going concern value. In addition, the proposed exemption would assure that any purchaser would have access to third-party carriers through trackage or haulage rights at commercially reasonable rates where traffic moved via those connections during the preceding 24-month period. Further, the proposal would give OFA purchasers more time to consider and evaluate a line by allowing offers up to 90 days after publication in the **Federal Register** and it would make the data available before the OFA process formally begins.

Petitioners' proposal would also invert the environmental and historic preservation requirements. Currently, abandoning carriers must prepare environmental and historic reports before filing for abandonment authority. Petitioners argue that this is sometimes wasteful, as a successful OFA purchase obviates the need for such reports. Petitioners' proposal would allow the environmental and historic reporting to be made after the completion of the OFA process.

As noted, the Board intends to hold a hearing during the fall on this petition and on other matters that interested persons may raise regarding the Board's abandonment process. The Board will issue a subsequent notice providing details for persons interested in submitting written comments and participating in the Board's hearing.

Board decisions, notices, and the May 15, 2003 petition are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 7, 2003.

By the Board, Roger Nober, Chairman.

Vernon A. Williams,

Secretary.

[FR Doc. 03–20588 Filed 8–12–03; 8:45 am]

BILLING CODE 4915–00–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number TM–03–06]

National Organic Program; Nominations for Peer Review Panel Technical Expert

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (Act) of 1990, as amended (7 U.S.C. 6516) permits the Department of Agriculture's (USDA) National Organic Program (NOP) to establish a peer review panel to evaluate the NOP's accreditation program. This notice calls for nominations for a technical expert to serve on the peer review panel.

DATES: Written nominations, with resumes, must be postmarked on or before September 12, 2003.

ADDRESSES: Nominations should be sent to Ms. Katherine E. Benham, Agricultural Marketing Information Assistant, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 4008–S, Ag Stop 0268, Washington, DC 20250–0268, and to Mr. Reinaldo B. Figueiredo, Program Director, Conformity Assessment, American National Standards Institute, 1819 L Street NW., 6th Floor, Washington DC 20036.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Director, Program Development, National Organic Program, 1400 Independence Ave., SW., Room 4008–S, Ag Stop 0268, Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; e-mail: *keith.jones@usda.gov.*

SUPPLEMENTARY INFORMATION: The Act permits the Administrator of the Agricultural Marketing Service to establish a peer review panel. Under the Act's implementing regulations (7 CFR 205.509) the peer review panel is to be composed of not less than 3 members who shall evaluate the National Organic Program's adherence to the accreditation procedures in subpart F of the regulations and International Organization for Standards/International Electro-technical Commission (ISO/IEC) Guide 61, General requirements for assessment and accreditation of certification/registration bodies, and the National Organic Program's accreditation decisions. This analysis is to be accomplished through the review of accreditation procedures, document review and site evaluation reports, and accreditation decision documents or documentation. The peer review panel is required to report its findings, in writing, to the NOP Program Manager.

The NOP has selected the American National Standards Institute (ANSI) to perform an assessment using the accreditation procedures at 7 CFR 205.500–205.510 and ISO/IEC Guide 61. In addition to the regulations and guidelines, ANSI's assessment method will utilize ISO 19011, Guidelines for quality and/or environmental management system audit and the International Accreditation Federation (IAF) policies and procedures for a multilateral recognition arrangement on the level of accreditation bodies and on the level of regional groups (Issue 3—Version 4).

The ANSI was selected by the NOP to perform this peer review assessment because of its world-wide credibility, knowledgeable and professional staff and performance of accreditation activities similar in size and scope to those undertaken by the NOP. ANSI has accredited 36 product certification programs for a variety of scopes and 2 personnel certification bodies in the U.S. and abroad. In addition, ANSI is the sole U.S. representative and dues-paying member of the International Organization for Standardization (ISO), and, via the U.S. National Committee (USNC), the International Electro-technical Commission (IEC). Further, ANSI is a member of the International Accreditation Forum (IAF), and the sole U.S. accreditation body for product and personnel certifiers in this international forum. Finally, at the regional level, ANSI is a member of Inter-American Accreditation Cooperation (IAAC) and also Pacific Accreditation Cooperation (PAC). The ANSI Registrar Accreditation Board (RAB) National Accreditation Program (NAP) is the U.S. signatory to the IAF Multilateral Recognition Arrangement for Quality and Environment Management Systems.

Assessment Team and Time Requirements

The assessment team will consist of three individuals; (1) an ANSI provided lead assessor trained in ISO/IEC Guide 61, (2) an ANSI provided assessor trained in ISO/IEC Guide 61, and (3) a NOP technical expert.

The timetable for the assessment is expected to require 4 days for preparation for the assessment, 6 days for assessment at USDA's Washington headquarters, 3 days for witness assessments at offices of USDA accredited certification bodies and 3 days for completion of the post-evaluation report. Completion of this report will be the responsibility of the lead assessor. The assessment process is expected to begin 60 days after the publication of this notice.

Minimum Skills and Experience Requirements

Candidates for the technical expert position must have demonstrable experience in working in team environments, possess excellent verbal and written communication skills (including use of electronic document formats), and demonstrate the ability to work under pressure and meet strict deadlines. Candidates must have demonstrable knowledge of organic production and handling methods and certification procedures. Preferred experience includes demonstrable knowledge of the NOP regulations (7 CFR 205 *et seq.*), ISO/IEC Guide 61 and ISO/IEC Guide 65. An understanding of how the ISO/IEC documents apply to public institutions is also preferred.

Candidates should submit their qualifications in a resume or curriculum vita format along with two examples of technical writing. In addition to this information, candidates should submit, if applicable, a ''declaration of interests'' list. This list should state all direct commercial, financial, consulting, family, or personal relationships that currently exist or have existed during the past 12 months. The technical expert will be required to recuse him/herself from the review of files of organizations with whom he/she have

had direct interests in the preceding 12 months.

Compensation/Professional Conduct

The NOP technical expert will be a sub-contractor to ANSI. Therefore, compensation for the technical expert including hourly rates and travel and per diem reimbursement will be determined by direct negotiations between ANSI and the NOP technical expert. In addition to the requirement of recusing him/herself from the assessment process as discussed above, the technical expert will be required to abide by all ANSI requirements concerning professional conduct.

Dated: August 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20539 Filed 8–12–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/ Possible Action, (6) How to Solicit Projects, (7) November Committee Conference, (8) Status of Members, (9) Grants & Agreements, (10) General Discussion, (11) Next Agenda.

DATES: The meeting will be held on August 25, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input session will be provided and individuals who made written requests by August 25, 2003 will have the opportunity to address the committee at those sessions.

Dated: August 7, 2003.

James F. Giachino.

Designated Federal Official.

[FR Doc. 03–20574 Filed 8–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Telephone Interviews with Occupants of World Trade Center 1, 2, and 7.

Form Number(s): None.

OMB Approval Number: None.

Type of Review: Emergency submission.

Burden Hours: 750.

Number of Respondents: 1,000.

Average Hours Per Response: 45 minutes.

Needs and Uses: NIST is conducting the Federal Investigation of the World Trade Center disaster subsequent to the House Committee on Science (Sherwood Boehlert, R–NY, Chairman) hearing on May 1, 2002, on *The Investigation of the World Trade Center Collapse: Findings, Recommendations and Next Steps* and the House Committee on Science (Sherwood Boehlert, R–NY, Chairman) hearing on March 6, 2002, on *Learning from 9/11—Understanding the Collapse of the World Trade Center.* The NIST Investigation is presently conducted under the authority of the National Construction Safety Team Act (NCST), Public Law 107–231, signed into law by the President on October 1, 2002. The objectives of the NIST World Trade Center Investigation are to: (1) Determine technically, why and how the buildings WTC 1, 2, and 7 collapsed following the initial impact of the aircraft; (2) determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response; (3) determine the procedures and practices that were used in the design, construction, operation, and maintenance of the World Trade Center Buildings; and (4) identify, as specifically as possible, building and fire codes, standards, and practices that warrant revision and are still in use. The first-hand accounts are critical to develop or refute investigatory hypotheses, support modeling results, and record events inside the buildings which cannot otherwise be determined. Factors which may affect the decision to initiate evacuation, including emergency communications, previous evacuation experience (1993 bombing), and training, will be examined. Further, this study will estimate the initial population of the World Trade Center 1, 2, and 7 on the morning of September 11, 2001. Ultimately, the data from this study will inform the development and revision of building codes, standards, and practices for the evacuation of high-rise buildings. This information collection must be conducted in a timely manner in order to facilitate dissemination to other aspects of the Investigation, including structural analysis, emergency personnel response, thermal environment and interior tenability, and egress and human behavior analysis.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by September 15, 2003 to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20611 Filed 8–12–03; 8:45 am]

BILLING CODE 3150–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2003 Annual Survey of Manufactures.

Form Number(s): MA–1000(L), MA–10000(S).

Agency Approval Number: 0607–0449.

Type of Request: Revision of a currently approved collection.

Burden: 187,000 hours.

Number of Respondents: 55,000.

Avg Hours Per Response: 3.4 hours.

Needs and Uses: The Census Bureau requests a reinstatement with change, of a previously approved collection for the Annual Survey of Manufactures (ASM). The Census Bureau has conducted the ASM since 1949 under the mandatory requirements of Title 13, United States Code to provide key measures of manufacturing activity during intercensal periods. In census years ending in ''2'' and ''7,'' we mail and collect the ASM as part of the Economic Census covering the Manufacturing Sector. The content of the questionnaires for the 2003 ASM is modified from the 2001 ASM report form. We plan to collect data on leased employees, their payroll including fringe benefits and hours worked. These data were collected for the first time as part of the 2002 Economic Census.

The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by class of product, inventories, and expenditures for new and used plant and equipment. The survey provides data for most of these items for each of the 5-digit and selected 6-digit industries as defined in the North American Industry Classification System (NAICS). We also provide geographic data by state at a more aggregated industry level.

This survey is an integral part of the federal government's statistical program. Its results provide a factual background for decision making by the executive and legislative branches of the federal government. Federal agencies use the annual survey's input and output data as benchmarks for their statistical programs, including the Federal Reserve Board's Index of Industrial Production and the Bureau of Economic Analysis' estimates of the gross domestic product (GDP). The data also provide the Department of Energy with primary information on the use of energy by the manufacturing sector to produce manufactured products. These data also are used as benchmark data for the Manufacturing Energy Consumption Survey which is conducted for the Department of Energy by the Census Bureau. The Department of Commerce uses the exports of manufactured products data to measure the importance of exports to the manufacturing economy of each state. Within the Census Bureau, the ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories. The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. State development/planning agencies rely on the survey as a major source of comprehensive economic data for policymaking, planning, and administration.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224 & 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail *(susan_schechter@omb.eop.gov).*

Dated: August 8, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20613 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Renewal of the Bureau of Economic Analysis Advisory Committee Charter

AGENCY: Bureau of Economic Analysis (BEA), Department of Commerce.

ACTION: Notice of the renewal of the BEA Advisory Committee Charter.

SUMMARY: Please note that the Secretary of Commerce has renewed the Charter for the Bureau of Economic Analysis Advisory Committee on August 6, 2003. It has been determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Suzette Kern, Designated Federal Official, Office of the Director, Bureau of Economic Analysis, 1441 L Street, NW., Washington, DC 20230; Telephone (202) 606–9616; Fax (202) 606–5310; E-mail *suzette.kern@bea.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999 to advise the Director of BEA on matters related to the development and improvement of BEA's national, industry, international, and regional economic accounts.

Dated: August 7, 2003.

Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 03–20647 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

SABIT Alumni Questionnaire

ACTION: Proposed information collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before October 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number:

(202) 482–0266; E-mail: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the alumni questionnaire should be directed to: Erin Schumacher, SABIT, 1099 14th Street, Suite 4100W, Washington, DC 20005; Phone number: (202) 482–0073; E-mail: *Erin_Schumacher@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce, International Trade Administration, SABIT Office supports technical assistance and training for professionals from Eurasia, while promoting information exchange and U.S.-Eurasian partnerships.

Since inception SABIT has trained over 2500 professionals from Eurasia. The purpose of this questionnaire is to assess the affect that the SABIT Program has had on its alumni, in order to make improvements to the program and report results.

II. Method of Collection

SABIT will outsource the process of contacting SABIT Program alumni. The selected contractor will use the submitted questionnaire for collecting the appropriate information, via phone, email, and in person.

III. Data

OMB Number: 0625–XXXX.

Form Number: ITA–XXXX.

Type of Review: Regular Submission.

Affected Public: Former participants of the SABIT Grant and Group Programs.

Estimated Number of Respondents: 1048.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 1048 hours (including preparation time and wrap-up).

Estimated Total Annual Costs: $0.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have the practical utility; (b) the accuracy of the agency's estimate of the burden (including the hours and costs) of the proposed collection of information; (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 through the use of automated collection techniques of forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 8, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20612 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–853]

Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Review.

SUMMARY: On April 9, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes to the margin calculations presented in the final results of the review. We find that bulk aspirin from the People's Republic of China was not sold in the United States below normal value during the period of review.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194 or (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review of bulk acetylsalicylic acid, commonly referred to as bulk aspirin, from the People's Republic of China (''PRC'') (*Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 17343 (April 9, 2003) (''*Preliminary Results*'')).

Since the *Preliminary Results*, the following events have occurred: We received case briefs from Rhodia, Inc. (the ''petitioner'') and Jilin Henghe Pharmaceutical Company, Ltd., (''Jilin''), on May 9, 2003. We received rebuttal briefs from Jilin and Shandong Xinhua Pharmaceutical Co., Ltd. (''Shandong'') on May 16, 2003.

The Department has now completed this antidumping duty administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the ''Act'').

Scope of Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (''USP'') 23. It is classified under the *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of bulk aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The period of review (''POR'') is July 1, 2001, through June 30, 2002.

Comparisons

We calculated export price, constructed export price and normal value based on the same methodology used in the *Preliminary Results* with the following exceptions:

• We corrected a ministerial error in the calculation of the surrogate overhead and SG&A ratios.
• We revised the surrogate value for inland truck transportation using the updated data available.
• We valued sulfuric acid using a surrogate value for sulfuric acid rather than a constructed value.

For a complete discussion of these changes see the August 7, 2003, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China'' (''*Decision Memorandum*''), the August 7, 2003, company-specific calculation memorandum, and the August 7, 2003, Factors of Production Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the *Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which the parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following dumping margins exist for the period July 1, 2001, through June 30, 2002:

Exporter/manufacture	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd.	0.00
Jilin Henghe Pharmaceutical Company Ltd.	0.00

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than de minimis, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the U.S. Bureau of Customs and Border Protection (BCBP) Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of these final results for all shipments of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) for Shandong and Jilin, which have separate rates, no antidumping duty deposit will be required; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: August 7, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

*Comment 1:*Use of Import Prices v. Domestic Prices in India to Value Phenol

Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration

Comment 3: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios

Comment 4: Other Adjustment to the Overhead and SG&A Ratios

[FR Doc. 03–20663 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Termination of the Five-Year Sunset Review

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

ACTION: Termination of the five-year sunset review of the antidumping duty order on fresh Atlantic salmon from Chile.

SUMMARY: On June 2, 2003, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on fresh Atlantic salmon from Chile. *See* Initiation of Five-Year Sunset Review, 68 FR 32728 (June 2, 2003). In the sunset review of this order, no domestic party responded to the notice of initiation by the applicable deadline. On July 25, 2003, the Department published in the **Federal Register** final results of the changed circumstances review, revocation of order, and rescission of administrative review with respect to this order. *See* Fresh Atlantic Salmon from Chile: Final Results of Antidumping Duty Changed Circumstances Review, Revocation of Order, and Rescission of Administrative Review, 68 FR 44043 (July 25, 2003). In the final results of the changed circumstances review, the Department determined to revoke the order on fresh Atlantic salmon from Chile, effective July 1, 2001, because domestic interested parties expressed no interest in the continuation of this order. Based on the final results of the changed circumstances review on fresh Atlantic salmon from Chile, which revoked the order as of a date prior to the date of the sunset revocation, the Department is terminating this sunset review.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Kelly Parkhill, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3791, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute and Regulations

The Department's procedures for the conduct of sunset reviews are set forth in section 751(c) of the Tariff Act of 1930 and 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope of Order

The product covered by this order is fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species Salmo salar, in the genus Salmo of the family salmoninae. ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the order. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out. Excluded from the scope are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers. The merchandise subject to this order is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Background

On June 9, 1998, the Department issued an antidumping duty order on fresh Atlantic salmon from Chile. *See* Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR 31411 (June 9, 1998). On June 2, 2003, the Department published in the **Federal Register** notice of initiation of the sunset review on fresh Atlantic salmon from Chile in accordance with 751(c) of the Act. *See* Initiation of Five-Year Sunset Review, 68 FR 32728 (June 2, 2003). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on this order. However, no domestic interested party in the sunset review on this order responded to the notice of initiation by the June 17, 2003, deadline (*See* 19 CFR 351.218(d)(1)(I) of Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13520 (March 20, 1998)).

On July 25, 2003, the Department published final results of the antidumping duty changed circumstances review, revocation of order, and rescission of administrative review. In the changed circumstances review the Department determined to revoke the antidumping duty order on fresh Atlantic salmon from Chile, effective July 1, 2001, the first day after the last completed review covering the 2001–2002 review period.

Determination to Terminate

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations,* if no interested party responds to the notice of initiation, the Department will issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. In this sunset review, no domestic interested party responded to the notice of initiation by the applicable deadline. We would normally have revoked this order effective July 30, 2003, pursuant to 19 CFR 351.222(i)(2). However, in light of the final results of the changed circumstances review revoking this order, as of July 1, 2001, the Department is terminating the sunset review on fresh Atlantic salmon from Chile.

Effective Date of Revocation

As a result of the changed circumstances review on fresh Atlantic salmon from Chile, the Department has instructed the U.S. Bureau of Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from a warehouse, on or after July 1, 2001. The effective date of revocation is July 1, 2001, the first day after the last completed review covering the 2001–2002 review period (68 FR 44043 (July 25, 2003)).

Dated: August 7, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–20664 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Continuation of Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China.

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

ACTION: Notice of continuation of antidumping duty order: freshwater crawfish tail meat from the People's Republic of China.

SUMMARY: On December 6, 2002, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC'') would be likely to lead to continuation or recurrence of dumping. *See* Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China, 67 FR 72645 (December 6, 2002).

On August 1, 2003, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on freshwater crawfish tail meat from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Crawfish Tail Meal from China, 68 FR 45276 (August 1, 2003). Therefore, pursuant to 19 CFR 351.218(f)(4) of the Department's regulations, the Department is publishing notice of the continuation of the antidumping duty order on freshwater crawfish tail meat from the PRC.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Kelly Parkhill, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3791.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2002, the Department initiated (67 FR 50420), and the Commission instituted (67 FR 50459), a sunset review of the antidumping duty order on freshwater crawfish tail meat from the PRC, pursuant to section 751(c) of the Act. As a result of the sunset review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked. *See* Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China, 67 FR 72645 (December 6, 2002).

On August 1, 2003, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on freshwater crawfish tail meat from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Crawfish Tail Meat from China, 68 FR 45276 (August 1, 2003), and USITC Publication 3614 (July 2003), Investigation No. 731–TA–752 (Review).

Scope of the Antidumping Duty Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10, 1605.40.10.90, 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on freshwater crawfish tail meat from the PRC. The Department will instruct Customs to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than July 2008.

Dated: August 7, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–20665 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Medical College of Georgia, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

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

Docket Number: 03–031.

Applicant: Medical College of Georgia, Augusta, GA 30912–2630.

Instrument: Electron Microscope, Model JEM–1230 (HC).

Manufacturer: JEOL Ltd., Japan.

Intended Use: See notice at 68 FR 42007, July 16, 2003.

Order Date: April 30, 2003.

Docket Number: 03–032.

Applicant: University of California, Los Angeles, Los Angeles, CA 90095–1763.

Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: See notice at 68 FR 42007, July 16, 2003.

Order Date: May 29, 2003.

Docket Number: 03–033.

Applicant: University of Washington, Seattle, WA.

Instrument: Electron Microscope, Model Tecnai G^2 F20 S–TWIN MAT.

Manufacturer: FEI Company, The Netherlands.

Intended Use: See notice at 68 FR 42007, July 16, 2003.

Order Date: May 20, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–20660 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North Carolina State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

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

Docket Number: 03–028.

Applicant: North Carolina State University, Raleigh, NC 27695–721 .

Instrument: Microarray System, Model QArray^{mini} X2700.

Manufacturer: Genetix Ltd, United Kingdom.

Intended Use: See notice at 68 FR 38675, June 30, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Spotting of small (less than 0.25 µl) liquid DNA or protein samples at a density of over 7000 spots per cm^2 by using tungsten pins, (2) a low-friction print head using ball bearings for a minimal error rate, (3) source plate cooling at 4°C and (4) a high pressure washing system. The National Institutes of Health advises in its memorandum of July 21, 2003 that (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–20659 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

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

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

Docket Number: 03–035. *Applicant:* Villanova University, 800 Lancaster Avenue, Villanova, PA 19085. Instrument: fNO$_X$500 Fast CLD System for NO analysis. Manufacturer: Cambustion Ltd, United Kingdom. Intended Use: The instrument is intended to be used to study the dynamic response of automotive exhaust after-treatment systems. Also, the instrument will be used on a variety of projects related to the dynamics measurement, modeling, diagnosis and control of exhaust after-treatment systems. Application accepted by Commissioner of Customs: July 11, 2003.

Docket Number: 03–36. *Applicant:* University of Wisconsin, Wisconsin Veterinary Diagnostic Laboratory, 6101 Mineral Point Road, Madison, WI 53705–4494. Instrument: Electron Microscope, Model H–7600. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument is intended to be used to identify viruses in fecal and intestinal samples for diagnosis of diseases in animals and in some cases, humans. It will also provide fast turnaround of samples and the ability to identify potential biological hazardous agents for homeland security. Application accepted by Commissioner of Customs: July 22, 2003.

Docket Number: 03–037. *Applicant:* University of Chicago, 933 East 56th Street, Chicago, IL 60637. Instrument: (19) each Pattern Trigger Modules. Manufacturer: Hytec Electronics Ltd, United Kingdom. Intended Use: The devices form part of the VERITAS gamma-ray camera, an astronomical observatory to be built in Arizona, which will be used for the study of extreme astrophysical processes in the universe. The telescope detects small light flashes in the atmosphere produced by incoming gamma rays from space. Light flashes are detected by a three-level trigger system run by an assembly of processors and components. The pattern trigger modules are the second level of the trigger. They recognize patterns of light emission on the sky. *Application accepted by Commissioner of Customs:* July 24, 2003.

Docket Number: 03–038. *Applicant:* University of Michigan, Transportation Research Institute, 2901 Baxter Road, Ann Arbor, MI 48109–2150. Instrument: Eye Fixation System, Model faceLAB 3.0. Manufacturer: Seeing Machines, Australia. Intended Use: The instrument is intended to be used to study driver glance behavior while using in-vehicle devices such as cell phones and navigation systems. It records where drivers look on a moment to moment basis, providing digitized coordinates from the head position, head orientation, and direction of gaze in real time. The results provide a basis for design guidelines (Federal, industry, and from consensus standard organization) for the safety and usability of products, as well as information related to licensing, hours of service and other topics. *Application accepted by Commissioner of Customs:* July 31, 2003.

Docket Number: 03–039. *Applicant:* University of Texas, Health Science Center, 6431 Fannin, Houston, TX 77030. Instrument: Electron Microscope, Model Tecnai G^2 Polara. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to augment on-

going three-dimensional structural studies of a broad range of macromolecules of biological interest at the recently established Structural Biology Center. Biological structures include the human pyruvate dehydrogenase, human α-macroglobulin, CaM kinase II, virus capsids, HR–S, and the ion transport complex by microbial rhodopsins which offers a source of data for developing and refining the methodology of high resolution electron microscopy. *Application accepted by Commissioner of Customs:* July 31, 2003.

Docket Number: 03–040. *Applicant:* Georgetown University, Department of Cell Biology, SW., 207 Med/Dent Building, 3900 Reservoir Road, NW., Washington, DC 20007. Instrument: Electron Microscope, Model H–7600–1. Manufacturer: Hitachi High-Technologies Corporation, Japan. Intended Use: The instrument is intended to be used in research to better understand the etiology of human disease and to search for cures. Experiments will include examination of the following: (1) The prostate in normal and cancerous stages, (2) the breast in normal and cancerous stages, (3) stem cells in the testis and in the brain and (4) the effect of diet on kidney transplantation. *Application accepted by Commissioner of Customs:* August 1, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–20661 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–7A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to the American Film Marketing Association (''AFMA'') on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1987 (52 FR 12578).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, at telephone (202) 482–5131 (this is not a toll-free number) or by E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amendment Certificate

Export Trade Certificate of Review No. 87–00001, was issued to the American Film Marketing Association on April 10, 1987 (52 FR 12578, April 17, 1987) and last amended on December 9, 1998 (64 FR 10993, March 8, 1999).

AFMA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Adriana Chiesa Enterprises SRL, Rome, Italy; Alliance Atlantis Communications Corporation, Toronto, Canada; Arclight Films Pty. Ltd., Sydney, Australia; Atlas International Film GMBH, Munich, Germany; Atrium Productions KFT, Rotterdam, The Netherlands; Beyond Film, Ltd., Surry Hills, Australia; British Film Institute, London, United Kingdom; Buena Vista Television, a Division of Disney/ABC Int'l TV Inc., Burbank, California; BV International Pictures AS, Avaldsnes, Norway; Capitol Films Limited, London, United Kingdom; China Star Entertainment Group, TST, Kowloon, Hong Kong; Cinemavault Releasing, Toronto, Canada; Cori Distribution Group, London, United Kingdom; DZ Bank, London, United Kingdom; FIDEC, Montreal, Canada; Film Finance Corporation, Sydney, Australia; Filmax-SOGEDASA, Barcelona, Spain; Filmexport Group SRL, Rome, Italy; Filmfour International, London, United Kingdom; Fintage House, Leiden, The Netherlands; Fleetboston Financial, Boston, Massachusetts; Focus Features, New York, New York; Fortissimo Film Sales, Amsterdam, The Netherlands; Freeway Entertainment Group Ltd., Budapest, Hungary; Fremantlemedia Enterprises, London, United Kingdom; Good Times Entertainment, Inc., Bel Air, California; Han Entertainment, Hong Kong; Hanway Films, London, United Kingdom; Hollywood Previews Entertainment, Inc., Santa Monica, California; Horizon Entertainment, Inc., Vancouver, Canada; IAC Film & Television, London, United Kingdom; Icon Entertainment International, London, United Kingdom; IFD Films & Arts, Ltd., Tsing Yi, New Territories, Hong Kong; IFM World Releasing, Inc., Glendale, California; In-Motion Pictures, Inc., London, United Kingdom; Intra Movies SRL, Rome, Italy; JP Morgan Securities, Inc. Entertainment Industries Group, Los Angeles, California; Kevin Williams Associates, S.A., Madrid, Spain; Lolafilms, Madrid, Spain; Media Asia Distribution, Ltd., Causeway Bay, Hong Kong; Moviehouse Entertainment, London, United Kingdom; New Zealand Film Commission, Wellington, New Zealand; North American Releasing, Inc., Vancouver, Canada; North by Northwest Distribution, Spokane, Washington; Oasis International, Toronto, Canada; Pathe International, Paris, France; Powerhouse Entertainment Group, Inc., Beverly Hills, California; Pueblo Film Group, Zurich, Switzerland; Renaissance Films, Ltd., London, United Kingdom; Safir Films, Ltd., Harrow, Middlesex, United Kingdom; Sogepaq S.A., Madrid, Spain; Solo Entertainment Group, Inc., Beverly Hills, California; Splendid Pictures, Inc., Bel Air, California; Stadsparkasse Koeln, Entertainment Finance, Cologne, Germany; Studiocanal, Boulogne, France; Svensk Filmindustri, AB, Stockholm, Sweden; Telepool, Munich, Germany; TF 1 International, Boulogne Billancourt Cedex, France; Trust Film Sales, Hvidovre, Denmark; TVA Films, A Division of Group TVA, Inc., Montreal, Canada; UGC International, Neuilly sur Seine, France; Vine International Pictures, Ltd., Downe, Orpington, United Kingdom; and The Works, London, United Kingdom; and

2. Delete the following companies as ''Members'' of the Certificate: Arama Entertainment, Encino, California; Associated Television International, Los Angeles, California; Blue Rider Pictures, Manhattan Beach, California; Capella International, Inc., Beverly Hills, California; IFM Film Associates, Inc., Glendale, California; Largo Entertainment, Beverly Hills, California, NBC Enterprises, Burbank, California; Saban Pictures International, Los Angeles, California; The Kushner-Locke Company, Beverly Hills, California; Village Roadshow Pictures, Burbank, California; Cinema Completions

International, Studio City, California; and Good Machine International, Inc., New York, New York. An additional 13 firms were announced in the **Federal Register** as ''companies to be deleted,'' but these companies were subsequently removed from the list. In the application, the Applicant inadvertently included included the aforementioned 13 companies as Member companies to be deleted, but these 13 companies were not Members of 87–5A001 Certificate of Review issued on March 8, 1999.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 7, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–20587 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; National Voluntary Laboratory Accreditation Program (NVLAP), NVLAP Information Collection System

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Vanda R. White, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; phone (301) 975–3592. In addition, written comments may be sent via e-mail to *vanda.white@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected from all laboratories, testing and calibration, that apply for NVLAP accreditation. Applicants provide the minimum information necessary to evaluate the competency of laboratories to carry out specific tests or calibrations or types of tests or calibrations. The collection is mandated by 15 CFR 285.

II. Method of Collection

An paper form application for accreditation is provided to each applicant laboratory. The application request, such information as name, address, phone and fax numbers, and contact person, and the test methods or parameters. The application must be signed by the Authorized Representative of the laboratory, committing the laboratory to comply with NVLAP's accreditation criteria. The completed application is submitted to NVLAP.

III. Data

OMB Number: 0693–0003.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and federal, state or local government laboratories.

Estimated Number of Respondents: 850.

Estimated Time Per Response: Ranges between 15 minutes for respondents verifying information on a preprinted form and 3 hours for those providing an initial application.

Estimated Total Annual Respondent Burden Hours: 2,338.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (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, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20610 Filed 8–12–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by September 12, 2003.

Title, Form, and OMB Number: Physician Certificate for Child Annuitant; DD Form 2828; OMB Number 0730–0011.

Type of Request: Revision.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden Per Response: 2 hours.

Annual Burden Hours: 240.

Needs and Uses: This form is required and must be on file to support an incapacitation occurring prior to age 18. The form provides authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service, Cleveland (DFAS–CL/PD) to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual. Respondents are incapacitated child annuitants, and/or their legal guardians, custodians, and legal representatives. When the form is completed, it will serve as a medical report to substantiate a child's incapacity.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room

10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–20576 Filed 8–12–03; 8:45 am]

BILLING CODE 5011–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service (DFAS). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DFAS.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Hovey, Human Capital and Staffing Division, Human Resources Directorate, Defense Finance and Accounting Service, Arlington, Virginia, (703) 607–3829.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DFAS PRB: James Cornell (Chairperson), Audrey Davis, Patrick Shine, Sally Smith. Executives listed will serve a one-year renewable term, effective August 18, 2003.

Dated: August 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–20577 Filed 8–12–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Revised Draft Environmental Impact Statement/ Environmental Impact Report for the Pier J South Marine Terminal Expansion Project, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Branch), in coordination with the Port of Long Beach, has completed a Revised Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Pier J South Marine Terminal Expansion project. The Port of Long Beach requires authorization pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for 115 acres of landfill in three phases, dredging up to 10,000,000 cubic yards of sediment, construction of a new concrete pile-supported wharf, new terminal buildings and a new rail yard.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Revised Draft EIS/EIR should be directed to Dr. Aaron O. Allen, Senior Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA, 90053–2325, (805) 585–2148.

SUPPLEMENTARY INFORMATION: None.

John V. Guenther,

Acting Commander.

[FR Doc. 03–20645 Filed 8–12–03; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for a Permit Application for the River Road Treatment Wetlands Project in the Santa Ana River (SAR) Floodplain Upstream of the River Road Crossing, Riverside County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent (NOI).

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, 40 CFR 1508.22, and 33 CFR Parts 230 and 325, and in conjunction with the Orange County Water District (OCWD), the U.S. Army Corps of Engineers (Corps) is announcing its intent to prepare a draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the River Road Treatment Wetlands Project (RRTWP), proposed to be located in the Santa Ana River (SAR) floodplain upstream of the River Road crossing, Riverside County, California. The project entails construction, operation, and periodic maintenance of treatment wetlands in the SAR floodplain. The SAR floodplain meets the Corps' criteria for ''waters of the U.S.,'' and the project is subject to Corps jurisdiction under the Clean Water Act. The affected area also contains Corps-owned lands leased to the Riverside County Regional Park and Open Space District. The area has been designated critical habitat for three federal-listed species by the U.S. Fish and Wildlife Service (USFWS); as such, the Corps will comply with the requirements of Section 7 of the Federal Endangered Species Act.

FOR FURTHER INFORMATION CONTACT: Daniel Swenson, Project Manager, at (213) 452–3414 (*daniel.p.swenson@usace.army.mil*) or Fari Tabatabai, Project Manager at (213) 452–3291, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325.

SUPPLEMENTARY INFORMATION:

1. Background

The treatment wetlands are necessary because of upstream sources of water pollution. The effect of the treatment wetlands would be to reduce downstream water pollution, thereby increasing groundwater potability, aquatic habitat function, and reducing potential human health threats.

Treated wastewater and return flows from irrigated agriculture and dairies are major sources of nitrate loading into the SAR. Nitrate loads enter the river directly through waste discharges and indirectly through surface runoff and rising groundwater. High levels of nitrate are a potential human health threat that can have adverse effects on infants and pregnant women. In addition, formation of algae blooms can lower the dissolved oxygen in the water resulting in fish kills and can form a clogging layer on the bottom of OCWD's recharge basins resulting in a decrease in water recharge and an increase in maintenance requirements.

The Proposed Project is based on the success of OCWD's Prado Wetlands, located immediately downstream of the proposed RRTWP, which has been successful in benefiting the OCWD

groundwater basin by improving groundwater quality and increasing recharge rates.

The work would take place on both OCWD and on Corps-owned lands within the Prado Flood Control Basin. The OCWD is the sole project proponent and the applicant for the Section 404 permit. As such OCWD would be responsible for construction, operation, and maintenance of the proposed facilities as well as preservation of existing operational facilities in Prado Dam, which is operated by the Corps. The Corps land under OCWD consideration consists largely of wetlands now in undeveloped recreation lease held by Riverside County Regional Park and Open Space District. The proposed work on Corps land would replace Arundo donax-dominated wetlands with higher quality, native vegetated wetlands. Outdoor recreation amenities including interpretive trails are also proposed.

Other environmental review considerations include compliance with Section 106 of the National Historic Preservation Act.

2. Project Purpose and Need

The purpose of the River Road Treated Wetland Project (RRTWP) is to improve the water quality of the SAR supplies that recharge the OCWD groundwater basin. The need arises from high levels of nitrate concentrations that adversely affect water quality and percolation recharge to the OCWD groundwater basin.

3. Proposed Action

The OCWD proposes development of treatment wetlands in the SAR floodplain as it enters the Prado Basin upstream of the River Road crossing. The RRTWP would treat baseflow diverted from the SAR, primarily for the removal of nitrate, and return the treated water to the river at the point of the present diversion to the Prado Wetlands. Maintenance objectives include: (1) Maintain hydraulic control structures and appurtenances; (2) keep the distribution and collection networks and hydraulic transfers free flowing and clear of obstructions; (3) maintain berms; and (4) control habitat performance by monitoring and taking appropriate steps to ensure that proposed vegetation and habitat types are achieved.

The RRTWP footprint would encompass 430 acres on the flood plain south of the SAR channel immediately upstream from the River Road crossing. All 430 acres meet the Corps' criteria for ''waters of the U.S.'', and the project would be subject to Corps jurisdiction under Section 404 of the Clean Water Act. The proposed project site contains Corps-owned lands leased to the Riverside County Department of Parks and Recreation. The area has been designated critical habitat for three federal-listed species by the U.S. Fish and Wildlife Service (USFWS); as such, the Corps will comply with the requirements of Section 7 of the Federal Endangered Species Act. The 430-acre area would be comprised of the following: (1) Approximately 190 acres of treatment wetlands surface area; (2) 40 acres of unvegetated laterals and transfer berms; (3) 100 acres of riparian woodland berms that could be affected by construction; and (4) 100 acres of existing high quality habitat that would be avoided, preserved, and enhanced. Of the above, existing moderate and low quality habitat degraded by Arundo donax would be enhanced to high quality habitat. Also, of the above acreages, approximately 52,400 linear feet (about 10 miles) of riparian forest/water edge habitat would be created or enhanced, including habitat for the southwestern willow flycatcher and least Bell's vireo. In addition, selected access trails totaling about 4.6 miles that transverse the RRTWP would be opened to the public for passive recreation.

The RRTWP would treat up to 150 cfs. The concentration of nitrate in the SAR currently averages about 8 mg/L. At flow rates less than 80 cfs, the RRTWP would be expected to reduce nitrate levels to 2 mg/L or less during the summer baseflow period.

The proposed design plan places the RRTWP on the floodplain south of the SAR channel. This is intended to minimize disturbance to the channel and floodplain by avoiding work on the north side of the channel, construction of multiple diversions, or passing water back and forth across the river.

The proposed RRTWP would consist of five operating units within the 430-acre project area: diversion facility, distribution network, treatment wetlands, collection network, and a fifth operating unit. The fifth operating unit, the integrated River Road Treated Wetland outlet-Prado Wetlands diversion facility, would be a modification to the existing diversion located west of the River Road Bridge that would divert water from the SAR. The distribution network would deliver the water to the treatment wetlands. The collection network would collect the treated water and deliver it to the outlet. The outlet would be integrated with the diversion to the Prado Treatment Wetlands. The integrated River Road Treated Wetland outlet-Prado Wetlands diversion would allow for coordinated discharge and diversion in a manner that would allow for coordinated discharge and diversion in a manner that would not degrade hydraulic conductivity or harm existing aquatic species, and that would retain passage of the Santa Ana sucker through the channel.

Design and construction of the principal treatment facilities, including the diversion, treatment wetlands, conveyances and hydraulic structures, would be expected to take about 24 months until operations could begin.

4. Alternatives Considered

The feasibility of several alternatives is being considered and will be addressed in the DEIS/EIR. Those considered feasible will be analyzed in equal detail to the Proposed Action. The purpose of the RRTWP is to improve the water quality of the SAR supplies that recharge the OCWD groundwater basin. The No Action Alternative would have no improvements, and thus would neither improve the water quality of the SAR, nor improve water recharge into the OCWD groundwater basin. No water quality benefits from nitrate removal would occur and no habitat restoration actions would take place.

Other alternatives that may be considered include: (1) Designing larger wetlands similar to the existing Prado treatment wetlands with less habitat enhancement; (2) designing a smaller or larger wetlands complex; (3) conventional chemical treatment by pumping water through a treatment facility; (4) requiring dischargers along the SAR to denitrify first at existing treatment plants before discharging to the SAR; (5) use of another portion of the SAR; and (6) use of upland agricultural habitat next to the SAR with mechanical pumping.

5. Scoping Process

The Corps' scoping process for the DEIS/EIR will involve soliciting written comments and a public meeting. Potential significant issues to be addressed in the DEIS/EIR include surface water quality, threatened and endangered species, and effects from potential flooding. Comments are invited from the public and affected agencies, including, but not limited to, the Environmental Protection Agency (EPA), USFWS, California Department of Fish and Game (CDFG), Riverside County Regional Park and Open Space District, and others.

Public Meeting: A public scoping meeting to receive input on the scope of the DEIS/EIR will be conducted on August 26th at 7 p.m. at the Norco Board Room/Council Chambers at 2820

Clark Avenue, Norco, California. If you have any questions regarding the meeting, please contact Rick Mendoza, Project Manager for OCWD, at the above address or by calling 714–378–3329, or via e-mail: *rmendoza@ocwd.com.*

Schedule: The estimated date the DEIS/EIR will be made available to the public is November 1, 2003.

John V. Guenther,

LTC, EN, Acting Commander.

[FR Doc. 03–20646 Filed 8–12–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between Naval Postgraduate School (NPS) and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, September 16, 2003, from 8:30 a.m. to 4 p.m. and on Wednesday, September 17, 2003, from 8 a.m. to 12 p.m. All written comments regarding the NPS BOA should be received by September 9, 2003 and be directed to Superintendent, Naval Postgraduate School (Attn: Jaye Panza), 1 University Circle, Monterey, CA 93943 or by fax (831) 656–3145.

ADDRESSES: The meeting will be held at the Air Force Institute of Technology, Wright-Patterson Air Force Base, Fairborn, Ohio.

FOR FURTHER INFORMATION CONTACT: Jaye Panza, Naval Postgraduate School, Monterey, California, 93943–5000, telephone number: (831) 656–2514.

Dated: August 4, 2003.

E. F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–20564 Filed 8–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 12, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 8, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State and Local Implementation of Individuals with Disabilities Education Act (IDEA) '97.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,219.

Burden Hours: 14,879.

Abstract: The Office of Special Education Programs (OSEP) is conducting a five-year study to evaluate the state and local impact and implementation of the Individuals with Disabilities Education Act (IDEA) of 1997. The evaluation will provide information on the types and impacts of policies and practices engaged in by states, school districts, and schools to implement the provisions of IDEA '97, particularly with regard to nine key issues identified by the law. OSEP is engaging in this evaluation to report to Congress, in accordance with the provisions of IDEA '97 (Sec. 674). Clearance is sought for multiple instruments. Respondents will be state special education directors, district special education directors, and school principals.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2272. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–20654 Filed 8–12–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 12, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 8, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Fast Response Survey System (FRSS) Survey on Internet Access in U.S. Public Schools, Fall 2003.

Frequency: One time.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 400.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. The two survey systems are intended to be low burden, quick turnaround methods of information collection on education issues for which there is a policy need and no current relevant data. This is the tenth in a series of annual surveys on Internet in U.S. public elementary and secondary schools.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2328. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–20655 Filed 8–12–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–557–000]

ANR Pipeline Company; Notice of Revised Tariff Filing

August 6, 2003.

Take notice that on August 1, 2003, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 21, with an effective date of September 1, 2003.

ANR submits that the listed tariff sheet is being proposed to provide additional flexibility to its existing firm service, Rate Schedule ETS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20630 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–006]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 25, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective February 28, 2003:

Second Substitute Original Sheet No. 456
Second Substitute Original Sheet No. 457

CEGT states that the purpose of this filing is to comply with the Commission's order issued July 11, 2003 in Docket No. RP00–482–005.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20617 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–011]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 25, 2003, CenterPoint Energy Gas Transmission Company (CEGT) filed the additional information required by the Commission's July 11, 2003 order in this docket.

CEGT states that copies of its filing are being mailed to all parties on the service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20632 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–003]

Dauphin Island Gathering Partners; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 24, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective July 1, 2003:

Fourteenth Revised Sheet No. 9
Eleventh Revised Sheet No. 10

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and the addition of one new shipper.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20624 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–004]

Dauphin Island Gathering Partners; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 30, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective August 29, 2003.

Second Revised Sheet No. 359
First Revised Sheet No. 427

Dauphin Island states that the revised tariff sheets are being filed to comply with 154.1(d) of the Commission's Regulations which state that any contract or executed service agreement that deviates in any material aspect from the form of service agreement must be filed with the Commission and such nonconforming agreement must be referenced in the pipeline's tariff.

Dauphin Island states that copies of its filing has been served to its customers and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20625 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–548–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

August 6, 2003.

Take notice that on July 11, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 11, 2003:

First Revised Sheet No. 0
Second Revised Sheet No. 57
Second Revised Sheet No. 204
Second Revised Sheet No. 205

Cove Point states that the purpose of this filing is to update contact information and correct typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20627 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–552–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

August 6, 2003.

Take notice that on July 25, 2003, Dominion Cove Point LNG, LP. (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 25, 2003:

Second Revised Sheet No. 200
Sheet Nos. 280–281
Original Sheet No. 282
Sheet Nos. 283–399

Cove Point states that the purpose of this filing is to add a provision to its General Terms and Conditions to provide for the Operational Sale of Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20628 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–449–002]

Eastern Shore Natural Gas Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 25, 2003, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of October 1, 2002.

Eastern Shore states that on October 15, 2002 it filed revised tariff sheets to be effective October 1, 2002 in order to comply with FERC Order No. 587–O to implement Version 1.5 of the North American Energy Standards Board (NAESB) standards. Eastern Shore explains that, based upon the Commission's review of Eastern Shore's proposed tariff revisions, the Commission found that Eastern Shore's revised tariff sheets generally complied with Order No. 587–O. By Letter Order issued July 17, 2003, however, the Commission directed Eastern Shore to file certain revised tariff sheets within fifteen (15) days of the letter order.

Eastern Shore states the revised tariff sheets, as filed herein, contain the required revisions necessary to comply with the Commission's July 17, 2003 letter order.

Eastern Shore states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20620 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–014]

El Paso Natural Gas Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on August 1, 2003, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed in Appendices A, B and C to the filing.

El Paso states that the tariff sheets are being filed to implement the capacity allocation changes in compliance with the Commission's July 9, 2003 orders in this proceeding. The tariff sheets are proposed to become effective November 1, 2002 and September 1, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20602 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118–006]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

August 6, 2003.

Take notice that on July 31, 2003, High Island Offshore System, L.L.C. (HIOS), tendered for filing its Negotiated Rate Filing.

HIOS' filing requests that the Commission approve a negotiated rate arrangement between HIOS and LLOG Exploration Offshore, Inc. HIOS requests that the Commission grant such approval effective August 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20619 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–326–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 29, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets proposed to become effective May 15, 2003:

Sub. Second Revised Sheet No. 141
Sub. Second Revised Sheet No. 149

Iroquois states that the instant tariff filing corrects inadvertent omissions of language from the above noted tariff sheets currently on file with the Commission. These omissions were discovered as part of an on-going internal review of Iroquois' FERC Gas Tariff. Iroquois states that the proposed corrections are necessary to provide Iroquois' shippers with uniform tariff provisions and to avoid confusion.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20623 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–374–002]

Kern River Gas Transmission Company; Notice of Request for Waiver

August 6, 2003.

Take notice that on July 30, 2003, Kern River Gas Transmission Company petitioned the Commission for a waiver of the EDI/EDM and FF/EDM processing requirements related to those NAESB Version 1.6 data sets that are not currently being utilized by Kern River's customers or other parties until such time as a bona fide request for those data sets is received by Kern River.

Kern River states that it has served a copy of this filing on each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20626 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–274–009]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

August 6, 2003.

Take notice that on July 25, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding and with its tariff requirement to file an Annual Threshold Report, identifying the eligible firm shippers receiving revenue credits and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20634 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–408–001]

KeySpan LNG, LP; Notice of Compliance Filing

August 6, 2003.

Take notice that on August 1, 2003, KeySpan LNG, LP (KLNG) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub Original Sheet No. 93A, to be effective July 1, 2003.

KLNG states that it makes this filing pursuant to a letter order issued by the Commission in Docket No. RP03–408–000 on June 30, 2003. The June 30 Order conditionally accepted KLNG's initial compliance filing pursuant to Order No. 587-R, subject to KLNG's meeting the conditions detailed in the June 30 Order. Kling states that the revised tariff sheet reflects the modifications required by the June 30 Order.

KLNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20604 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–555–000]

Midwestern Gas Transmission Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on August 1, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 247, to become effective September 1, 2003.

Midwestern states that the purpose of this filing is to comply with the Commission's Order on Remand in Docket No. RM98–10–011 dated October 31, 2002 101 FERC ¶61,127, wherein the Commission found that it is no longer necessary to have a five year matching cap as part of the ROFR process. Midwestern states that in the ROFR process, a shipper may retain its capacity if it matches the highest rate and the longest term bid by a third party. Therefore, in accordance with the October 31, 2002 Order, Midwestern states that it is removing the five year matching cap from the ROFR process in its tariff.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20629 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–172–006]

Mojave Pipeline Company; Notice of Filing of Fuel Imbalance Refund Report

August 6, 2003.

Take notice that on June 30, 2003, Mojave Pipeline Company (Mojave) filed a fuel imbalance refund report at Docket No. RP01–172.

Mojave states that the fuel refunds were made to comply with the terms of its Settlement at Docket No. RP01–172–000 (Settlement), which was accepted by Commission Order issued January 31, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20618 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–345–000]

National Fuel Gas Supply Corporation; Notice of Application

August 6, 2003.

Take notice that on August 4, 2003, National Fuel Gas Supply Corp. (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP03–345–000, an application pursuant to section 7(c) of the Natural Gas Act, as amended (NGA), and of part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for a certificate of public convenience and necessity authorizing National Fuel to construct and operate certain facilities located in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This application 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.

National Fuel states that it proposes to construct and operate an interconnection station to establish direct connection between its existing gas transmission facilities and the Hebron Storage Field, which are not currently directly connected. National Fuel states that the Hebron Storage Field is jointly owned by National Fuel and Tennessee Gas Pipeline Company (Tennessee), and currently National Fuel must have its withdrawal gas delivered by Tennessee. National Fuel states that the proposed interconnect station will be used for withdrawal of gas only and will increase the maximum deliverability for the storage field early in the injection season from approximately 385 MMcf per day to approximately 425 MMcf per day.

National Fuel indicates that the new interconnection station would include a metering and regulation station and associated pipeline facilities and would be located on its 24-inch transmission pipeline, designated Line Y-M2, near the Hebron Storage Field in Hebron Township, Potter County, Pennsylvania. National Fuel estimates the cost of constructing the proposed facilities is $1,434,192.

Any questions regarding the application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (719) 857–7949, or at *reitzd@natfuel.com*.

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 NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

Comment Date: August 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20614 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–558–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 6, 2003.

Take notice that on August 1, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Sixth Revised Sheet No. 9, to become effective August 1, 2003.

National states that Article II, Sections 1 and 2 of the settlement provides that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, Section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.57 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20631 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–090]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

August 6, 2003.

Take notice that on August 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 2003.

Natural states that the purpose of this filing is to implement revisions to certain existing negotiated rate transactions with Lamar Power Partners, L.P., and FPLE Forney, L.P. under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20608 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–507–001]

Northern Border Pipeline Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 30, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 272; Substitute Original Sheet No. 272A; and Original Sheet No. 272A.01, to become effective July 1, 2003.

Northern Border states that the purpose of this filing is to comply with the Commission's Order at Docket No. RP03–507–000 dated June 30, 2003 (103 FERC ¶61,390), wherein the Commission directed Northern Border to file revised tariff sheets consistent with the conditions as discussed in the body of the Order.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 11, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20605 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–451–003]

Northern Natural Gas Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on July 28, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheet, with an effective date of October 1, 2003:

Fourth Revised Sheet No. 269

Northern states that the filing is being filed to correct an inadvertent oversight regarding its imbalance trading provisions in its December 23, 2002 compliance filing in this proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20621 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–451–004]

Northern Natural Gas Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on August 1, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to correct the pagination for the tariff sheet filed on July 28, 2003 in this proceeding:

Substitute Fourth Revised Sheet No. 269

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20622 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–556–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

August 6, 2003.

Take notice that on August 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, First Revised Sheet No. 131, First Revised Sheet No. 144, and First Revised Sheet Nos. 217 and 218, with an effective date of September 1, 2003.

GTN states that these sheets are being filed in response to the Commission's Order on Remand in Docket No. RP00–205–006, wherein the Commission granted GTN permission to file a revenue-based interruptible transportation capacity allocation methodology.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20606 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–047]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

August 6, 2003.

Take notice that on August 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Substitute Fourteenth Rev. Sheet No. 15, Substitute Fifteenth Rev. Sheet No. 15 and Sixteenth Revised Sheet No. 15.

GTN states that these sheets are being filed to reflect that a negotiated rate agreement, inadvertently eliminated in a prior filing, has been extended on a monthly basis through the end of August 2003 pursuant to evergreen language contained in the agreement. GTN requests that the Commission accept the proposed tariff sheets to be effective as indicated on each individual sheet—June 1, 2003, July 1, 2003 and August 1, 2003, respectively.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20636 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–029]

Questar Pipeline Company; Notice of Tariff Filing

August 6, 2003.

Take notice that on August 1, 2003, Questar Pipeline Company's (Questar) submitted a tariff filing to reflect a new negotiated-rate contract with Williams Energy Marketing & Trading Company.

Questar's negotiated-rate contract provisions were authorized by Commission Orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar states that copies of this filing have been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20635 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–127]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

August 6, 2003.

Take notice that on August 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Union Light, Heat & Power Company. Tennessee requests that the Commission grant such approval effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20607 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–126]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

August 6, 2003.

Take notice that on August 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Cincinnati Gas & Electric Company. Tennessee requests that the Commission grant such approval effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20633 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–376–002]

TransColorado Gas Transmission Company; Notice of Compliance Filing

August 6, 2003.

Take notice that on August 1, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective July 1, 2003:

2nd Sub Original Sheet No. 213A
2nd Sub Original Sheet No.227G.02

TransColorado states that the purpose of this filing is to comply with the Commission's Letter Order issued on July 23, 2003, in Docket No. RP03–376–001.

TransColorado states that copies of the filing are being served on all parties set out on the Commission's official service list in Docket No. RP03–376–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: August 13, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–20603 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

August 6, 2003.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2242.

c. *Date filed:* July 23, 2003.

d. *Submitted By:* City of Eugene, Oregon.

e. *Name of Project:* Carmen-Smith Project.

f. *Location:* The project is located in Linn County, Oregon on the McKenzie river, 70 miles east of Eugene-Springfield. The majority of the project is located on lands within the Willamette National Forest.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the Eugene Water & Electric Board, 500 East Fourth Avenue, Eugene, OR 97401. Contact: Ms. Patty Sabol, (504) 484–2411.

i. *FERC Contact:* Robert Easton, 202–502–6045, *Robert.Easton@Ferc.Gov*.

j. *Expiration Date of Current License:* November 30, 2008.

k. *Project Description:* The Carmen-Smith project consist of the Carmen diversion dam and reservoir, the Carmen power tunnel, the Smith dam and reservoir, the Smith power tunnel, a surge chamber, the Carmen power plant, the Trail-Bridge re-regulating dam and reservoir, the Trail Bridge power plant, the velocity barrier and spawning channel and a 19 mile long transmission line.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2242. Pursuant to 18 CFR 16.9(b)(1) 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 November 30, 2006.

A copy of the application 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, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20615 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–111]

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

August 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 459–111.

c. *Applicant:* Union Electric Company (d/b/a Ameren/UE).

d. *Name of Project:* Osage Hydroelectric Project.

e. *Location:* On the Osage River, in Benton, Camden, Miller and Morgan Counties, central Missouri. The Project occupies federal lands.

f. *Applicant Contact:* Jerry Hogg, Ameren/UE, 617 River Road, Eldon, MO 65026; (573) 365–9315; e-mail *jhogg@ameren.com*.

g. *FERC Contact:* Allan Creamer at (202) 502–8365; or e-mail at *allan.creamer@ferc.gov*.

h. Ameren/UE mailed a copy of the Preliminary Draft Environmental Assessment (PDEA) and draft license application to interested parties on July 10, 2003. The Commission received a copy of the PDEA and draft application on July 11, 2003. Copies of both

documents are available from Ameren/UE at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f), with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Magalie R. Salas, Secretary, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so before October 9, 2003.

j. With this notice, we are initiating consultation with the state historic preservation officer, as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20616 Filed 8–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Los Alamos Site Office; Floodplain/Wetlands Statement of Findings for Two Monitoring Wells at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, DOE.

ACTION: Floodplain/Wetlands statement of findings.

SUMMARY: This floodplain/wetlands statement of findings is for the installation and operation of two groundwater monitoring wells within two separate canyon floodplain locations at Los Alamos National Laboratory (LANL), Los Alamos, New Mexico. Monitoring well CdV–16–1 (i) would be located within LANL in Cañon de Valle, and monitoring well R–2 would be located near the LANL boundary within the Incorporated County of Los Alamos in Pueblo Canyon. The installation process for the wells would include the placement of small cement pads around the wells, along with a gravel-covered area, and road improvements, culverts and erosion control materials and mechanisms as needed. The wells would be operated and monitored periodically after installation was completed. In accordance with 10 CFR part 1022, the Department of Energy (DOE), National Nuclear Security Administration (NNSA) Office of Los Alamos Site Operations has prepared a floodplain/wetland assessment and would perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withers, U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–8690, of facsimile (505) 667–9998; or electronic address: *ewithers@doeal.gov.*

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 100 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA prepared a floodplain/wetland assessment for this action. The NNSA published a Notice of Floodplain and Wetlands Involvement (Volume 68, Number 139). This Notice announced that the floodplain/wetlands assessment document was available for a 15-day review period and that copies of the document could be obtained by contacting Ms. Withers at the above address or were available for review at two public DOE reading rooms in Los Alamos and Albuquerque, New Mexico. No comments were received from the **Federal Register** notice on the proposed floodplain action.

Project Description: The DOE is installing a network of monitoring wells around and within LANL to characterize the hydrogeological setting of the Pajarito Plateau. These monitoring wells will be installed at varying depths and used to provide information on the groundwater aquifers present and to monitor various characteristics of the aquifers over time. The two subject monitoring wells would be installed in canyon-bottom settings chosen by the New Mexico Environment Department, which is the local regulator for water quality appointed by the Environmental Protection Agency.

Alternatives: Alternative locations for the wells were not considered for this project due to the focused scope of the hydrogeological characterization of groundwater impacts from past LANL activities. The placement of wells R–2 and CdV–16–1 (i) has been mandated by the New Mexico Environment Department, hence alternate well sites were not deemed feasible. However, the proposed drilling activities would be conducted outside the stream channel and the short-term adverse construction impacts to the floodplains of Cañon de Valle and Pueblo Canyon would be mitigated to the extent practicable.

Floodplain/Wetlands Impacts: Well CdV–16–1 (i) in Cañon de Valle would be located above the top bank of the stream and would not directly impact wetlands. Erosion and sediment control best management practices (BMPs) would be installed to prevent material from entering the stream channel. Short-term, direct impacts to the floodplain above the top bank of the Cañon de Valle stream channel would occur from the construction of the well, the concrete pad, and the graveled area around the pad.

There would be short-term indirect impacts from discharge of well development water to the ground.

Wetlands are not present at well location R–2 or along the existing access road to the construction site in Pueblo Canyon. Short-term direct impacts to the stream channel would result from improving the access road stream crossings. A culvert would be installed of sufficient size to pass normal flows and would be removed at the completion of the project. In addition, direct impacts to the floodplain would occur above the top bank of the Pueblo Canyon stream channel due to construction of the well, concrete pad, and graveled area. As with the well in Cañon de Valle, there would be short-term indirect impacts from discharge of well development water to the ground.

The proposed action of installing and operating two monitoring wells does conform to applicable State or local floodplain protection standards. The pertinent Los Alamos County Code Ordinance is: 85–70 ''An Ordinance Repealing Chapter 15.16 of the Los Alamos County Code Adopting a New Chapter 17.70 Pertaining to Flood Damage Prevention.''

Floodplain Mitigation: Placement of BMPs (such as silt fences, straw bales or wattles, or wooden or rock structures to slow down water runoff and run-on at cleared sites) at the construction area and post-construction reseeding and

revegetation of the disturbed ground around the well pads would minimize soil disturbance and reduce or prevent the potential for soil erosion. The road design would include an appropriately designed culvert so that downstream flow and function of the floodplain will not be impeded. Indirect impacts from discharge of well development water to the ground would be minimized. The water would be sampled and the analytical results would be sent to the New Mexico Environment Department for their approval prior to discharge. Discharge would be through sprinklers or via a water truck along the access roads. No debris would be left at the work site. No vehicle maintenance or fueling within 100 feet of the floodplain would occur. Any sediment movement from the site would be short term and temporary.

Issued in Los Alamos, NM, on August 5, 2003.

Ralph E. Erickson,

Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

[FR Doc. 03–20585 Filed 8–12–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[IN 150–1; FRL–7543–5]

Notice of Final Determination for Alcoa-Warrick Power Plant in Newburgh, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on March 5, 2003, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for the Alcoa-Warrick Power Plant (Alcoa) by the Indiana Department of Environmental Management (IDEM). The EAB dismissed the petition because it determined that it does not have jurisdiction to review permits that are issued solely under a state's federally approved Title V permit program.

DATES: The effective date for the EAB's decision is March 5, 2003. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of August 13, 2003.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Sam Portanova at (312) 886–3189.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/orders/alcoa.pdf.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?
B. What Is The Background Information?
C. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by IDEM.

B. What Is the Background Information?

On November 6, 2002, IDEM issued a Part 70 Significant Source Modification permit (permit number 173–16275–00002) to Alcoa to modify three pulverized dry bottom wall-fired boilers by installing low NO_X burners. The permit allows the boilers to fire bituminous coal or natural gas and requires the use of low NO_X burners to control nitrogen oxide (NO_X) emissions. IDEM determined that this project qualified as a pollution control project and was not subject to PSD.

Stephen A. Loeschner subsequently filed a petition for review of the permit with the EAB on December 10, 2002. Mr. Loeschner argued that IDEM improperly exempted this modification from PSD review by granting it a pollution control project exemption. He also argued that this permit should require carbon monoxide continuous emissions monitors.

In two previous rulings, Carlton, Inc. N. Shore Power Plant, 9 E.A.D. 690 (EAB 2001), and DPL Energy Montpelier Electric Generating Station, 9 E.A.D. 695 (EAB 2001), as in the Alcoa case, the petitioners challenged the state agency's decision to issue state minor source permits rather than federal PSD permits. In denying review in both of these permits, the EAB ruled that its jurisdiction is limited to federal PSD permits that are actually issued under the PSD program, and does not extend to a state's decision not to issue a PSD permit.

C. What Did the EAB Determine?

On March 5, 2003, the EAB dismissed the petition for review on the grounds that the Board lacks authority to review the Alcoa permit, which was issued solely under Indiana's federally approved Title V program and was not a federal PSD permit.

Dated: July 24, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–20526 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7543–3]

Integrated Risk Information System (IRIS); 2003/2004 Program; Notice and Request for Scientific Information on Supplemental 2003 Program; Request for Chemical Substance Nominations for 2004 Program

AGENCY: Environmental Protection Agency.

ACTION: Notice; Announcement of supplement to the IRIS 2003 program and request for scientific information on health effects that may result from exposure to chemical substances; and request for chemical substance nominations for the IRIS 2004 program.

SUMMARY: The Integrated Risk Information System (IRIS) is an Environmental Protection Agency (EPA) data base that contains the Agency's scientific consensus positions on human health effects that may result from exposure to chemical substances in the environment. On February 5, 2003, in a **Federal Register** (68 FR 5870), EPA announced the 2003 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances. The notice also stated that later in 2003: (1) Additional assessments may be announced in the **Federal Register**; and (2) EPA would solicit public nominations for chemical substances for its 2004 agenda. Today, EPA is following up on these two actions.

DATES: EPA invites the public to submit scientific information pertaining to the specific chemical substances listed in this notice, and/or nominations for substances to be considered for an assessment in 2004 in accordance with the instructions provided at the end of this notice by October 14, 2003.

ADDRESSES: Please submit relevant scientific information to the IRIS Submission Desk in accordance with the address and instructions provided at the end of this notice. Similarly, chemical substance nominations should be

submitted to the IRIS Submission Desk, or on-line, in accordance with the address and instructions provided at the end of this notice.

FOR FURTHER INFORMATION: For information on the IRIS program, contact Amy Mills, Program Director, National Center for Environmental Assessment (mail code 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to *mills.amy@epa.gov.* For general questions about access to IRIS or the content of IRIS, please call the IRIS Hotline at (301) 345–2870 or send electronic mail inquiries to *hotline.iris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that might result from exposure to chemical substances found in the environment. IRIS currently provides information on health effects associated with more than 500 chemical substances.

The data base includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.,* hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

EPA's overall process for developing IRIS assessments consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on selected chemical substances; (2) a search of the current literature; (3) development of draft health assessments and IRIS summaries; (4) peer review within EPA; (5) peer review outside EPA; (6) EPA consensus review and management approval; (7) preparation of final IRIS summaries and supporting documents; and (8) entry of summaries and supporting documents into the IRIS data base.

The IRIS Annual Agenda

Each year, EPA develops a list of priority chemical substances and an annual agenda for the IRIS program. EPA uses four general criteria to set these priorities: (1) EPA statutory, regulatory, or program-specific implementation needs; (2) availability of new scientific information or methodology that might significantly change the current IRIS information; (3) interest to other levels of government or the public; and (4) availability of other scientific assessment documents such that only a modest additional effort would be needed to complete the review and documentation for IRIS. The decision to assess any given chemical substance hinges on available Agency resources. Timing of EPA's risk assessment guidance, guidelines, and science policy decisions may also play a role in deciding when the Agency has the appropriate methods to assess a chemical substance.

On February 5, 2003, EPA stated (68 FR 5870) that it might publish a supplement to its fiscal year 2003 agenda by identifying additional priority chemical substances selected for assessment. Accordingly, today's notice supplements the priority list published in the **Federal Register** on February 5, 2003, (68 FR 5870) by providing a list of additional health assessments beginning in fiscal year 2003 and instructions for submitting scientific information to EPA pertinent to the development of health assessments for these chemical substances. The February 5, 2003, notice also stated that EPA planned to publish a solicitation later in the year for public nomination of chemical substances to consider for assessment beginning in fiscal year 2004. Consequently, today's notice provides instructions for nominating additional chemical substances for EPA's consideration.

EPA continues to build and update the IRIS data base by addressing the foremost user needs, as expressed by EPA and the public. EPA will also work toward updating all assessments in the data base where new scientific information is available to do so.

Stakeholder Workshop on Priority-Setting Criteria

As announced in the February 5, 2003, **Federal Register** notice (68 FR 5870), EPA sponsored a stakeholder workshop on March 4, 2003, concerning priority-setting criteria that are used or should be used to select chemical substances for an IRIS assessment. Versar, Inc., an EPA contractor, convened and facilitated this workshop to obtain input and suggestions from a spectrum of IRIS users on the appropriateness of EPA's current priority-setting criteria, and whether other criteria such as public health impact or economic impact should be added. In general, the panel members agreed that IRIS is an important international scientific resource with a valuable core purpose of providing high-quality health assessments of chemical substances with potentially significant impacts on public health. While workshop panelists generally supported the current priority-setting criteria, they suggested that EPA evaluate whether public health concerns are sufficiently addressed by the current criterion for statutory, regulatory, and programmatic need. Panel members also discussed possible alternatives to the current priority-setting system. Some cautioned that the development of a more elaborate priority-setting system might make the process overly complex and burdensome to the Agency, leading to unnecessary delays.

In response to the panelists' suggestion, EPA reviewed previous chemical substance nominations to determine if public health concerns were implicitly covered by the statutory, regulatory, or programmatic needs driving the nominations. Public health impact is defined, for this purpose, as being associated with adverse human health effects and widespread exposure. EPA determined that most of the chemicals nominated in the annual priority-setting process have known or suspected toxicity and known or suspected widespread exposure. EPA concludes that public health concerns appear to be adequately subsumed in the current IRIS nomination process and that no specific additional public health criterion is needed at this time.

Many panel members also recommended that EPA focus its improvement efforts on making the IRIS priority setting process more transparent by including information concerning why each chemical substance was selected for an assessment. To that end, this notice adds transparency by listing supplemental fiscal year 2003 chemical substances with the corresponding rationale for each selection. With additional resources available to the IRIS program, EPA is also able to provide an open public chemical substance nomination process for 2004 to better respond to the broader IRIS user community. Additional information on the stakeholder workshop and EPA's position of how public health concerns are addressed in its current priority-setting criteria can be obtained by calling the IRIS Hotline (301) 345–2870, or by sending electronic mail inquiries to *hotline.iris@epa.gov.*

Submission of Scientific Information on Supplementary Assessments for Fiscal Year 2003

With the publication of this notice, EPA announces the start of assessments for the following chemical substances in

2003. At this time, the completion of these new assessments is expected between fiscal years 2004–2006. The listed substances are annotated with the basis for their selection.

Unless otherwise noted, EPA will assess noncancer and cancer endpoints for each substance. For all endpoints assessed, both qualitative and quantitative assessments will be developed if data is available.

Chemical	CAS No.	Reason(s) for assessment/ reassessment
Acrylonitrile	107–13–1	Need for CAA hazardous air pollutant and residual risk programs. New scientific information is available. Public interest.
Beryllium (cancer update).	7440–41–7	New scientific information is available.
n-Hexane	110–54–3	CERCLA need—Regional EPA interest. New scientific information is available. Relevant assessment document is available.
Methylene chloride (Dichloro-. methane)	75–09–2	RCRA hazard identification and corrective action. New scientific information is available. Public interest. Relevant assessment document is available.
Trichloroacetic acid.	76–03–9	SDWA need—Stage 2 disinfection byproduct regulation. Relevant assessment document is available.
1,2,3-Trichloropropane.	96–18–4	CERCLA need—Regional EPA interest. New scientific information is available. Relevant assessment document is available.

Consistent with previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in supplementary assessments announced in this notice. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that EPA might not otherwise obtain through open literature searches. We are requesting the submission of scientific information from the public during the information gathering stage for the supplementary ''new assessments'' listed above. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note that if you have submitted certain information previously to the IRIS Submission Desk, there is no need to resubmit that information. While EPA is primarily soliciting information on supplementary fiscal year 2003 assessments announced in this notice, the public may submit information on any chemical substance at any time.

Procedures for Submission of Scientific Information

Within 60 days of this notice, provide all information (studies, reports, articles, *etc.*) you wish to submit. Note that this process is streamlined from previous years in which you were asked to provide an initial submission inventory. Your submission should specify the chemical substance to which your information pertains, CASRN (Chemical Abstract Service Registry Number), and the topic or aspect of the assessment that is being addressed (*e.g.*, carcinogenicity, mode of action). In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how the study results could change the information in IRIS. All citations should be listed in scientific citation format, that is, author(s), title, journal, and date. Include names, addresses, and telephone numbers of person(s) to contact for additional information. Mail two copies, one of which should be unbound, to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770. Alternatively, you may submit the materials electronically to *IRIS.desk@epa.gov.* Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5″ floppy disks or CD. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI material must be submitted to the appropriate EPA office via established procedures (*see* 40 CFR, part 2, subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying your submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (*see* **FOR FURTHER INFORMATION**).

Submission of Nominations for New Assessments for the Fiscal Year 2004 IRIS Program

Today's notice invites voluntary public nominations for chemical substances not already listed today or in the February 5, 2003, **Federal Register** notice (68 FR 5870). All nominations should identify the nominator and address the following questions for each chemical substance:

Identification of nominator:

Name _____

Title _____

Affiliation _____

Phone _____

Address _____

_____

_____

E–mail address _____

1. What is the chemical substance name, most common synonym (if applicable), and CAS number?

2. Is this assessment needed to fulfill a chemical-specific EPA mandate or program need (*e.g.*, statutory, regulatory, or court-ordered deadline)? If so, what is the time frame?

3. Is this assessment a priority for stakeholders outside of EPA (*e.g.*, states, tribes, local governments, environmental organizations, industries, other IRIS users)?

4. Are you aware if another assessment of this substance is available to EPA (*e.g,* an EPA program has assessed this substance but it has not received Agency-wide IRIS review, or another government organization has assessed this substance)?

5. For substances being nominated for IRIS reassessment, what, if any, significant new scientific data or new EPA risk assessment methodology is available that you believe would be likely to appreciably change the existing IRIS assessment?

6. Are there other factors that would make this substance a priority for IRIS assessment (*e.g.*, widespread exposure, expected toxicity, potentially susceptible populations)?

Nominations are requested within 60 days of this notice, and may be submitted online at *www.epa.gov/iris/whatsnew/2004nominations* or by mail or electronic mail. Submissions by mail may be made to the IRIS Submission Desk, c/o ASRC, 6301 Ivy Lane, Suite 300, Greenbelt, MD 20770. Please send two copies, with one copy unbound. Alternatively, nominations may be sent electronically to *IRIS.desk@epa.gov.* Electronic information must be submitted in WordPerfect format or as an ASCII file. Information also will be accepted on 3.5″ floppy disks or CD. The IRIS Submission Desk will acknowledge receipt of your information.

Dated: August 8, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–20528 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0266; FRL–7321–7]

Imazapyr; 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–2003–0266, must be received on or before September 12, 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: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *Tompkins.Jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0266. 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 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–2003–0266. 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–2003–0266. 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–2003–0266.

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–2003–0266. 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: August 7, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was

prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 0F6166

EPA has received a pesticide petition (PP 0F6166) from BASF, 26 Davis Drive, Research Triangle Park, NC 27709–3528 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of imazapyr [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-l*H*-imidazol-2-yl]-3-pyridinecarboxylic acid], applied as the isopropylamine salt, in or on the raw agricultural commodity on grass forage at 125 parts per million (ppm) and hay at 35 ppm, fish at 1 ppm, shellfish at 0.1 ppm, milk at 0.01 ppm, and kidney at 0.5 ppm, meat by-products other than kidney at 0.05 ppm, meat at 0.05 ppm, and fat at 0.05 ppm of cattle, sheep, goats, and horses. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*—i. *Bermudagrass*. Radiolabeled imazapyr was applied at 1.5 lb acid equivalents/acre (ae)/A to field-grown bermudagrass. Parent imazapyr accounted for the majority of the total radioactive residue (TRR) in all harvested samples. No metabolites were identified which require regulation.

ii. *Ruminant*. Goats were dosed with radiolabeled imazapyr at 17.7 ppm, 42.5 ppm, or 47 ppm dietary equivalents for 7 days. As assessed for goats receiving the 17.7 or 42.5 ppm doses, TRR in fat, liver and leg and loin muscle were non-detectable < 0.05 ppm. TRR in milk were a maximum of 0.01, 0.02, and 0.02 ppm for the three goats, respectively, while TRR in kidney were 0.08, 0.11, and 0.08 ppm, respectively. Of these residues, parent imazapyr accounted for 50–66% of the TRR in milk and 82–95% of the TRR in kidney. No metabolites were identified which require regulation.

iii. *Confined crop rotation*. Radiolabeled imazapyr was applied to soil at a rate of 0.79 lb ae/A. Root (carrot), lettuce (leafy vegetables), and wheat (cereal grains), were planted at 330 through 540 days; shorter intervals were not required as rangeland and pastures are not normally rotated to other crops. The TRR in all harvested samples were <0.02 ppm and the major extractable component of these residues was parent imazapyr. Therefore, there is no reasonable expectation of inadvertent residues in rotational crops planted 12 months after application.

2. *Analytical method*. M 3023 is a reliable capillary electrophoresis method with ultraviolet (CE/UV) detection for the determination of imazapyr residues in grass forage and grass hay. M 3184 is a reliable CE/UV method for the determination of imazapyr residues in meat, kidney, other meat byproducts, and fat of cattle, sheep, goats, and horses. M 3075 is a reliable CE/UV method for the determination of imazapyr residues in milk. M 3066 is a reliable CE/UV method for the determination of imazapyr residues in fish and shellfish.

3. *Magnitude of residues*—i. *Grass*. Imazapyr was applied at a nominal rate of 0.75 lb ae/A to bluegrass, bermudagrass, tall fescue, and bromegrass for a total of 14 field trials. Residues of imazapyr were reached a maximum of 98 ppm in grass forage immediately after treatment and 27 ppm upon drying to grass hay cut 7 days after treatment. Therefore, tolerances of 125 ppm in/on grass forage and 35 ppm in/on grass hay are proposed.

ii. *Ruminants*. Lactating dairy cows were dosed orally each day for 28 or 29 consecutive days at feed equivalents of 0, 58, 157, 607, and 1,680 milligrams (mg) imazapyr per kilogram (kg) dry matter consumed. The 58 mg/kg dose is equivalent to 1.4 times the anticipated dietary burden for the worst-case cattle diet where 10% of the grass received an imazapyr spot treatment, the proposed label use for range and pasture grasses. At 58 mg/kg, imazapyr residues in milk were < 0.01 ppm; residues in muscle, fat, and liver were <0.05 ppm; and residues in kidney averaged 0.25 ppm. Furthermore, imazapyr residues in milk were shown not to be concentrated into milk fat. Therefore, the following tolerances for imazapyr residues in cattle, sheep, goats, and horses are proposed: Milk at 0.01 ppm; meat byproducts (except kidney) at 0.05 ppm; meat at 0.05 ppm; fat at 0.05 ppm; and kidney at 0.5 ppm.

iii. *Fish and shellfish*. Imazapyr was applied at 1.6 lb ae/A to two ponds containing fish and aquatic invertebrates. Imazapyr residues were observed from the organisms collected from the treated ponds at only one site and only in the 3-hour-after-treatment samples. Average residues from these samples were: Bluegill, 0.636 ppm; tilapia, 0.233 ppm; catfish, 0.068 ppm; crayfish, 0.059 ppm. In a separate study, freshwater clams were exposed to a dose of imazapyr equivalent to 1.5 lb ae/A as applied to a 2.2-foot deep pond; residues of imazapyr in these clams remained <0.05 ppm at all intervals evaluated (up to 28 days post-treatment). Given these results, tolerances for imazapyr are proposed at 1 ppm for fish and 0.1 ppm for shellfish.

B. Toxicological Profile

1. *Acute toxicity*. Based on a battery of acute toxicity studies, imazapyr has been placed in toxicity category I for eye irritation, category IV for oral LD_{50} and primary dermal irritation, and category III for dermal LD_{50} and inhalation LC_{50}. Imazapyr was a non-sensitizer when tested for dermal sensitization (Buehler Method).

2. *Genotoxicity*. Studies on gene mutation and other genotoxic effects, Ames Salmonella Assay, CHO/HGPRT Point Mutation Assay, *in vitro* CHO cell chromosome aberration assay, dominant lethal assay, and unscheduled DNA synthesis (UDS) in primary rat hepatocytes yielded negative results.

3. *Reproductive and developmental toxicity*—i. For a rat developmental toxicity study at doses of 0, 100, 300, or 1,000 mg/kg body weight/day (b.w./day), the only clinical sign of toxicity was salivation in gravid dams at 1,000 mg/kg b.w./day. The No-Observed-Adverse-Effect Level (NOAEL) for maternal toxicity is 300 mg/kg b.w./day. There were no developmental findings in this study up to the limit dose of 1,000 mg/kg b.w./day, the highest dose tested (HDT).

ii. For a rabbit development toxicity study at doses of 0, 25, 100, and 400 mg/kg b.w./day, the maternal and developmental NOAEL is 400 mg/kg b.w./day HDT. Doses were based on pilot range-finder study, which tested at 0, 250, 500, 1,000, and 2,000 mg/kg b.w./day. The only toxic effect observed was increased salivation at 1,000 and 2,000 mg/kg b.w./day.

iii. A 2–generation rat reproduction study at doses of 0, 1,000, 5,000, or 10,000 ppm yielded a NOAEL of 10,000 ppm highest concentration tested (HCT) (800 mg/kg b.w./day for males, 980 mg/kg b.w./day for females, as based on food consumption data).

4. *Subchronic toxicity*—i. A 90–day dietary study in rats at doses of 0, 15,000, or 20,000 ppm resulted in a

NOAEL of 20,000 ppm HCT (approximately 1,695 mg/kg b.w./day for males, 1,785 mg/kg b.w./day for females, as based on food consumption data).

ii. A 21–day rabbit dermal toxicity study at doses of 0, 100, 200, or 400 mg/kg b.w./day resulted with the NOAEL of 400 mg/kg b.w./day HDT.

5. *Chronic toxicity*—i. A 1–year chronic toxicity study in dogs at doses of 0, 1,000, 5,000, or 10,000 ppm yielded a NOAEL of 10,000 ppm HCT (equivalent to 250 mg/kg b.w./day).

ii. A 2–year chronic toxicity/carcinogenicity study in rats at doses of 0, 1,000, 5,000, or 10,000 ppm provided NOAELs for both systemic toxicity and oncogenicity of 10,000 ppm HCT (approximately 500 mg/kg b.w./day for males, 640 mg/kg b.w./day for females, as based on food consumption data).

iii. An 18–month oncogenicity study in mice at doses of 0, 1,000, 5,000, or 10,000 ppm provided NOAELs for both systemic toxicity and oncogenicity of 10,000 ppm HCT (equivalent to 1,500 mg/kg b.w./day).

6. *Animal metabolism*. Results from a rat metabolism study indicated that imazapyr was rapidly absorbed and excreted by 7 days post-dosing, with the majority of the administered 14C-label (90%) eliminated in the urine within 48 hours. Metabolite characterization studies showed that essentially all the test material was excreted unchanged. Two minor metabolites were detected in the urine or feces of treated rats; however, their contribution combined was less than or equal to 0.5% of the administered dose. An additional 12 unidentified metabolites were isolated, but they contributed less than 3% of the total dose.

7. *Metabolite toxicology*. There were no metabolites identified in plant or animal commodities which require regulation.

8. *Endocrine disruption*. There is sufficient data from the 2–generation rat reproduction study as well as from the subchronic (90–day) rat feeding study and chronic feeding studies in the dog (1–year), rat (24–month), and mouse (18–month), to determine whether imazapyr has potential estrogenic properties or causes other endocrine effects. The collective data from these studies, indicate that imazapyr is not associated with any treatment-related estrogenic or endocrine effects.

The 2–generation rat reproduction study, conducted at dietary concentrations up to 10,000 ppm, showed no treatment-related effects on reproductive performance (including estrous cycle data, mating indices, pregnancy rates, fertility indices, gestational length, and gestation indices) or on pup growth and development from parturition to adulthood for both litter intervals. Histopathological examinations of the testes, epididymides, prostate gland, and seminal vesicles, were conducted for high-dose and control P_1 and F_1 adult males. Histopathological examinations of the mammary gland, ovaries, uterus (corpus and cervix), and vagina, were conducted for high-dose and control P_1 and F_1 adult females. In addition, for F_{2b} pups, histopathological examinations of the adrenal glands, pancreatic islets, pituitary gland, thyroid gland, parathyroid glands, testes, epididymides, prostate gland, seminal vesicles, mammary gland, ovaries, uterus (corpus and cervix), and vagina, were conducted. For all of these tissue examinations, no treatment-related microscopic findings were observed in either males or females. Further, no treatment-related macroscopic findings were observed for either parental or pup generations.

Organ weight data and histopathological examinations from the subchronic (90–day) rat feeding study and chronic feeding studies in the dog (1–year), rat (24–month), and mouse (18–month), may also be utilized to determine whether imazapyr has potential estrogenic properties or causes other endocrine effects. Absolute and relative weights of the adrenal glands (not measured in the dog study), pituitary gland, thyroid/parathyroid gland, ovaries, and testes (with/without epididymides) were recorded for animals at the interim (if applicable) and terminal sacrifice periods in these studies. In addition, detailed macroscopic and microscopic examinations of the following organs were performed: Pituitary gland, thyroid gland, parathyroid glands, pancreatic islets, adrenal glands, testes, epididymides, prostate gland, seminal vesicles (not performed in the dog study), mammary gland, ovaries, uterus (corpus and cervix), and vagina. No information was found from the organ weight data or macroscopic and microscopic examinations, from the subchronic (90–day) rat feeding study and chronic feeding studies in the dog (1–year), rat (24–month), and mouse (18–month), that suggests that imazapyr is associated with any treatment-related estrogenic effects or effects on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*—a. *Acute dietary exposure*. An acute dietary risk assessment is not required because no acute toxicological endpoints were identified by the EPA for imazapyr.

b. *Chronic dietary exposure*. Novigen Sciences, Inc. conducted a Tier 1 assessment of potential chronic dietary exposure from the proposed uses of imazapyr for weed control in pasture/range grasses and for aquatic weed control. These uses may result in dietary residues in shellfish, freshwater finfish, milk, and tissues of cattle, sheep, goats, and horses. This assessment also included the current tolerances on field corn commodities. For this Tier 1 analysis, tolerance values were used for fish at 1.0 ppm; shellfish at 0.1 ppm; kidney of cattle, sheep, goats, and horses at 0.5 ppm; other meat byproducts of cattle, sheep, goats, and horses at 0.05 ppm; meat of cattle, sheep, goats, and horses 0.05 ppm; fat of cattle, sheep, goats, and horses at 0.05 ppm; and milk at 0.01 ppm. Tolerance level residues were assumed, including those for field corn grain (0.05 ppm). Chronic dietary exposure analyses for the overall U.S. population and 25 population subgroups, including infants and children, were compared to the chronic Reference Dose (RfD) of 2.5 mg/kg b.w./day. Results of the chronic dietary analyses for all population subgroups examined were less than 0.1% of the chronic RfD. Exposure estimates for children 1 to 6 years of age, the most highly exposed population group, were only 0.000575 mg/kg b.w./day or less than 0.1% of the RfD. Therefore, the results of the chronic dietary assessment demonstrate a reasonable expectation of no harm from the proposed and existing uses of imazapyr.

ii. *Drinking water*. According to label restrictions, ARSENAL herbicide will not be applied directly to water within ½ mile upstream of an active potable water intake in flowing water (i.e., river, stream, etc.) or within ½ mile of an active potable water intake in a standing body of water such as lake, pond or reservoir. However, for purposes of demonstrating the large margin of exposure to imazapyr residues in drinking water, no label restrictions will be presumed. Rather, a level of 0.200 ppm in the water will be used, as based upon data from Missouri and Florida sites at 1–hour after treatment (maximum levels of imazapyr were approximately 0.197 ppm and 0.092 ppm, respectively). If 0.200 ppm is chosen as the maximum potential residues in the aquatic dissipation studies, then the standard (chronic) exposure analyses would be:

Adult male (200 µg/L x 10^{-3} mg/µg X 2 L/day) / 70 kg = 0.0057 mg/kg/day

Adult female (200 µg/L x 10^{-3} mg/µg X 2 L/day) / 60 kg = 0.0067 mg/kg/day

Children (200 µg/L x 10^{-3} mg/µg X 1 L/day) / 10 kg = 0.02 mg/kg/day

The degree of risk can be characterized by the magnitude of the margin of exposure (MOE), which is the ratio of the NOAEL from the animal toxicity study used to set the RfD to an estimated human exposure value (MOE = NOAEL/Human Exposure). Based on the NOAEL of 250 mg/kg b.w./day from the chronic dog study and children's exposure value (worst case) of 0.02 mg/kg b.w./day, a very high, favorable MOE of 12,500 times is derived. Thus, there is a reasonable expectation of no harm from the proposed and existing uses of imazapyr.

2. *Non-dietary exposure*. There is no available information quantifying non-dietary exposure to imazapyr. However, based on physical and chemical characteristics of the compound, the use patterns, and available information concerning its environmental fate, non-dietary exposure is expected to be negligible.

Previous registrations for imazapyr included non-crop sites. Labeled use sites for one group of imazapyr products include railroad, utility, pipeline, and highway rights-of-way, utility plant sites, petroleum tank farms, pumping installations, fence rows, storage areas, non-irrigation ditchbanks, under asphalt, under pond liners, wildlife management areas, forestry site preparation, and other non-crop areas. Imazapyr products for the above uses are clearly not intended for use in residential or recreational areas that have a high potential of exposure for the general population. The labels state that these imazapyr products are not for use on lawns, walks, driveways, tennis courts or similar areas.

Other imazapyr products are labeled as plant growth regulators for applications to limited care-low maintenance areas, such as roadsides, airports, fairgrounds, and golf course roughs, and to limited wear areas such as industrial, institutional, and cemetery grounds. These low rate uses entail minimal exposure potential for the general population. The product labeling does not allow use on turf that is being grown for sale or other commercial use, such as sod. There are imazapyr products marketed for residential use. These total vegetation control products are used for spot treatments or bare ground applications. These products are to be applied only where no plant growth is desired and are not to be used on lawns. Therefore, even for the limited residential uses, the potential for exposure is minimal.

For the aquatic use, a recreational swimmer risk assessment is not required because no acute toxicological endpoints for oral, dermal, and inhalation routes of exposure were identified by EPA for imazapyr. Moreover, the dermal NOAEL for the 21–day rabbit toxicity study is the HDT (400 mg/kg b.w./day), indicating that imazapyr is non-toxic following repeated dermal exposure.

3. *Operator exposure*. Specifically, for potential short- and intermediate-term occupational exposure, professional contractors (representing worst-case for the proposed uses) would be mixing/loading/applying the end-use product for less than 90 days per year (and less than 30 consecutive days per year). Importantly, in its risk characterization of imazapyr for use in/on corn (1997), EPA found no toxicological endpoints indicating potential for adverse effects that were identified for short-term (1–7 days) and intermediate-term (7 days to several months) occupational exposure. In the 21–day dermal toxicity study, the NOAEL was determined to be 400 mg/kg b.w./day HDT. This was further supported by oral NOAELs of 250 mg/kg b.w./day HDT in the chronic dog study and 500 mg/kg b.w./day HDT (males) or 640 mg/kg b.w./day HDT (females) in the chronic rat study. Therefore, short- and intermediate-term risk assessments are not required.

D. Cumulative Effects

Imazapyr belongs to the imidazolinone class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazapyr has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population*. Based on the chronic RfD of 2.50 mg/kg b.w./day, the proposed application will utilize less than 0.1% of this value. Exposure estimates for the general U.S. population were only 0.000227 mg/kg b.w./day. Exposure estimates for children 1 to 6 years of age, the most highly exposed population group, were only 0.000575 mg/kg b.w./day or less than 0.1% of the RfD. EPA generally has no concern for exposure below 100% of the RfD which represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data, indicating low potential mammalian toxicity, and the conservative chronic exposure assumptions support the conclusion that there is a ''reasonable certainty of no harm'' from aggregate exposure to imazapyr residues.

2. *Infants and children*. No developmental, reproductive or fetotoxic effects were noted at the highest doses of imazapyr tested. The only maternal effect in the rat teratology study was increased salivation in the highest dose group. The NOAEL used to calculate the RfD for the general U.S. population is 250 mg/kg b.w./day derived from the 1–year chronic toxicity study in dogs. That NOAEL is lower than the developmental NOAELs for the teratology studies in rabbits and rats (1.6 and 4 times, respectively), as well as lower than the NOAEL for the 2–generation reproduction study in male and female rats (3.2 - 3.9 times).

EPA has found the data base relative to prenatal and postnatal effects for children to be complete, valid and reliable. There were no effects observed in the offspring in the developmental studies in rats and rabbits. In the reproduction study, the lack of any pup effects observed at 10,000 ppm (the highest dose tested) in their growth and development from parturition through adulthood, suggests that there is no additional sensitivity for infants and children. Therefore, an additional safety (uncertainty) factor is not warranted and the RfD of 2.50 mg/kg b.w./day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

Therefore, the registrant believes that the results of the toxicology and metabolism studies support both the safety of imazapyr to humans based on the intended use as a herbicide for aquatic and grass uses and the granting of the requested tolerances.

F. International Tolerances

There are no Codex tolerances established for imazapyr.

[FR Doc. 03–20640 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0259; FRL–7320–6]

Pyraclostrobin; 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–2003–0259, must be received on or before September 12, 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–2003–0259. 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–2003–0259. 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–2003–0259. 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–2003–0259.

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–2003–0259. 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: August 5, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summary of the petitions were prepared by Interregional Research Project Number 4 (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 4 (IR-4)]

PP 2E6473, PP 3E6548, and PP 3E6553

EPA has received pesticide petitions [PP 2E6473, PP 3E6548, and PP 3E6553] from (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.582 by establishing tolerances for combined residues of the fungicide [pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite methyl 2-[[[1-(4-chlorophenyl)-1H-

pyrazol-3-yl]oxy]methyl]phenyl carbamate] in or on the following raw agricultural commodities: [lettuce, leaf and lettuce, head at 22 parts per million (ppm)], [vegetable, leaves of root and tuber, group 2 at 16 ppm], and [brassica, head and stem, subgroup 5A at 5 ppm]. 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 summary has been prepared by Bayer Corporation, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism*. Nature of the residue studies (OPPTS 860.1300) were conducted in grape, potato and wheat as representative crops in order to characterize the fate of pyraclostrobin in all crop matrices. Pyraclostrobin demonstrated a similar pathway and fate in all three crops. In all three crops the pyraclostrobin residues of concern (ROC) of were characterized as parent (pyraclostrobin) and BAS 500-3), methyl-N[[[1-(4-chlorophenyl) pyrazol-3yl]oxy]o-tolyl] carbamate.

2. *Analytical method*. In plants the method of analysis is aqueous organic solvent extraction, column clean up and quantitation by LC/MS/MS. In animals the method of analysis involves base hydrolysis, organic extraction, column clean up and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by gas chromatography/mass spectrometry (GC/MS).

3. *Magnitude of residues*. Field trials were carried out in order to determine the magnitude of the residue in the following crops: Brassica, head and stem; lettuce, head and leaf; and turnip greens to satisfy the requirements for a crop group tolerance for pyraclostrobin in leaves of root and tuber vegetables. Field trials were carried out using the maximum label rate, the maximum number of applications, and the minimum preharvest interval for each crop or crop group.

B. Toxicological Profile

1. *Acute toxicity*. Based on available acute toxicity data pyraclostrobin and its formulated products do not pose acute toxicity risks. The acute toxicity studies place technical pyraclostrobin in toxicity category IV for acute oral; category III for acute dermal and category II for acute inhalation. Pyraclostrobin is category III for both eye and skin irritation, and it is not a dermal sensitizer. Two formulated end use products are proposed, an emulsifiable concentrate (EC) and an extruded granule (EG). The EC has an acute oral toxicity category of II, acute dermal of III, acute inhalation of IV, eye and skin irritation categories of III, and is not a dermal sensitizer. The WG has acute oral and dermal toxicity categories of III, acute inhalation of IV, eye irritation of III, skin irritation of IV and is not a dermal sensitizer.

2. *Genotoxicity.* Ames test (1 study; point mutation): Negative;*in vitro.* CHO/HGPRT Locus Mammalian Cell Mutation Assay (1 study; point mutation): Negative; *in vitro* V79 Cells CHO Cytogenetic Assay (1 study; chromosome damage): Negative; *in vivo.* Mouse micronucleus (1 study; chromosome damage): Negative; *in vitro* rat hepatocyte (1 study; DNA damage and repair): Negative; pyraclostrobin has been tested in a total of 5 genetic toxicology assays consisting of *in vitro* and *in vivo* studies. It can be stated that pyraclostrobin did not show any mutagenic, clastogenic or other genotoxic activity when tested under the conditions of the studies mentioned above. Therefore, pyraclostrobin does not pose a genotoxic hazard to humans.

3. *Reproductive and developmental toxicity.* The reproductive and developmental toxicity of pyraclostrobin was investigated in a 2-generation rat reproduction study as well as in rat and rabbit teratology studies. There were no adverse effects on reproduction in the two-generation study so the no observed adverse effect level (NOAEL) is the highest dose tested (HDT) of 300 ppm (32.6 milligrams/kilogram body weight/day (mg/kg bwt/day). Parental and pup toxicity in the form of reduced body weight gain were observed at the HDT only. Therefore, the parental systemic and developmental toxicity NOAEL's are the same at 75 ppm (8.2 mg/kg bwt).

No teratogenic effects were noted in either the rat or rabbit developmental studies. In the rat study, maternal toxicity observed at the mid and high dose consisted of decreased food consumption and body weight gain. Developmental changes noted at the high dose were increased incidences of dilated renal pelvis and cervical ribs with no cartilage. The maternal NOAEL was 10 mg/kg bwt and the developmental NOAEL was 25 mg/kg bwt.

In the rabbit teratology study, maternal toxicity observed at the mid and high doses consisted of decreased food consumption and body weight gain (severe at the high dose). An increased post-implantation loss was also observed at the mid and high doses due to an increase in early resorptions. In rabbits, these types of effects are often observed with significant stress on the mothers (as seen by the body weight gain decrease in this study) and not indicative of frank developmental toxicity. The NOAEL for both maternal and developmental toxicity was 5 mg/kg bwt.

4. *Subchronic toxicity.* The subchronic toxicity of pyraclostrobin was investigated in 90–day feeding studies with rats, mice, and dogs, and in a 28–day dermal administration study in rats. A 90–day neurotoxicity study in rats was also performed. Generally, mild toxicity was observed. At high dose levels in feeding studies, general findings in all three species were decreased food consumption and body weight gain and a thickening of the duodenum. Anemia occurred at high dose levels in both rats and mice with accompanying extramedullary hematopoiesis of the spleen in rats. In rats only, a finding of liver cell hypertrophy was indicative of a physiological response to the handling of the chemical. Overall, only mild toxicity was observed in oral subchronic testing.

In the 28–day repeat dose dermal study, no systemic effects were noted up to the HDT of 250 mg/kg bwt/day.

In a 90–day rat neurotoxicity study, a direct neurotoxic effect was not observed.

5. *Chronic toxicity.* Pyraclostrobin was administered to groups of 5 male and 5 female purebred Beagle dogs in the diet at concentrations of 0, 100, 200 and 400 ppm over a period of 12 months. Signs of toxicity were observed at the high dose. Diarrhea was observed throughout the study period for both sexes. High dose males and females initially lost weight and body weight gain was decreased for the entire study period for females. Hematological changes observed were an increase in white blood cells in males, and an increase in platelets in both sexes at the high dose. Clinical chemistry demonstrated a decrease in serum total protein, albumin, globulins and cholesterol in high dose animals of both sexes possibly due to the diarrhea and reduced nutritional status of the animals. The NOAEL was 200 ppm (ca. 5.5 mg/kg bwt/day males; 5.4 mg/kg bwt/day females).

In a carcinogenicity study, pyraclostrobin was administered to groups of 50 male and 50 female Wistar rats at dietary concentrations of 0; 25; 75, and 200 ppm for 24 months. In a companion chronic toxicity study, 20 rats/sex were used at the same dose

levels as in the carcinogenicity study. A body weight gain depression of 10–11% in males and 14–22% in females with an accompanying decrease in food efficiency was observed at the high dose. The only other effect observed was a decrease in serum alkaline phosphatase in both sexes at the high dose and decreased alanine aminotransferase in high dose males. There was no evidence that pyraclostrobin produced a carcinogenic effect in rats. The NOAEL for the chronic rat and the cancer rat study is 75 ppm (ca. 3.4 mg/kg bwt/day males; 4.6 mg/kg bwt/day females).

Pyraclostrobin was administered to groups of 50 male and 50 female B6C3F1 mice at dietary concentrations of 0, 10, 30, 120 and 180 ppm (females only) for 18 months. Body weights were reduced at the HDT in both males and females. At the high dose, body weight gain decreases of 27% in females and 29% in males with an accompanying decrease in food efficiency were observed. No other signs of toxicity were noted at any dose level. The NOAEL was found to be 120 ppm (ca. 20.5 mg/kg bwt/day) for females and 30 ppm (ca. 4.1 mg/kg bwt/day) for males. There was no evidence that pyraclostrobin produced a carcinogenic effect in mice.

6. *Animal metabolism.* In a rat metabolism study with pyraclostrobin, 10–13% of the administered dose was excreted in the urine and 74–91% in the feces within 48 hours. Excretion via bile was significant accounting for 35-38% of the administered dose. By 120 hours after dosing, very little radioactivity remained in tissues. Pyraclostrobin was rapidly and almost completely metabolized. Very little unchanged parent was detected. The phase one biotransformation is characterized by N-demethoxylation, various hydroxylations, cleavage of the ether bond and further oxidation of the two resulting molecule parts. Conjugation of the formed hydroxyl groups by glucuronic acid or sulfate also occurred. In summary, pyraclostrobin is extensively metabolized and rapidly eliminated primarily via the bile, with no evidence of accumulation in tissues.

7. *Metabolite toxicology.* A comparison of the rat metabolism results with the plant metabolism/residue results indicates that toxicology studies performed with the parent pyraclostrobin are sufficient to cover dietary exposure. Plant residues are primarily the parent compound with a fraction (up to 10-20% at most) being the demethoxylated parent. This metabolite is referred to as BF 500–3 in the plant studies and as 500M07 in the rat study. This metabolite in the rat is the first step in the major biotransformation process leading to the majority of the metabolites determined in the major excretion pathway.

8. *Endocrine disruption.* No specific test has been conducted with pyraclostrobin to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that pyraclostrobin produces endocrine related effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food* Assessments were conducted to evaluate the potential risk due to chronic and acute dietary exposure of the U.S. population to residues of pyraclostrobin (BAS 500 F). This fungicide and its desmethoxy metabolite (BAS 500-3) were expressed as the parent compound (BAS 500 F). Tolerance values have previously been established for various cereals, vegetables, fruits, and animal products and are listed in the U.S. EPA final rule published in the **Federal Register** September 27, 2002 (Vol 67, No. 188, p 60886 60902). This analysis included brassica (head & stem), lettuce (head & leaf), and leaves of root and tuber vegetables as the target crops.

The dietary assessment analysis followed an initial tier approach with only one refinement. Default processing factors, 100% crop treated, and anticipated residue values from the raw agricultural commodity (RAC) field studies along with some residue tolerances were assumed in the assessment. The CARES 1.1 model with the CSFII/FCID consumption data were used to calculated acute and chronic exposure estimates.

Acute dietary exposure. The estimated acute dietary exposure estimates for the crops listed were well under 100% of the aPAD at the 95_{th} percentile (Table 2). The overall general population and the most sensitive subpopulation (females 13–49 years) utilized < 0.15% and 7.8% of the aRfD, respectively. The %aPAD ranged from 0.1 to 22.9% for all subpopulations.

Population	Exposure Estimate	%aRfD	%aPAD
Subgroups	(mg/kg bwt/day)		
Birth to 1 year	>0.00045	>.02	>.02
1–2 years	0.003053	0.10	0.10
3–5 years	0.003297	0.11	0.11
1–6 years	0.003215	0.11	0.11
6–12 years	0.002884	0.10	0.10
13–19 years	0.002515	0.08	0.08
Females 13–49 years	0.003888	7.78	22.87
Males 20–49 years	0.003405	0.11	0.11

Chronic: Results of the chronic dietary exposure assessments are listed below. The estimated chronic dietary exposure from the crops listed above was less than 5.5% and 16.5% of the cRfD and cPAD for all subpopulations, respectively.

Population	Exposure Estimate	%cRfD	%cPAD
Subgroups	milligrams/kilogram body weight/day (mg/kg bwt/day)		
Birth to 1 year	0.0002888	0.85	2.63 1–2 years
0.0013	3.82	11.82	3–5 years
0.001731	5.09	15.74	1–6 years
0.00161	4.74	14.64	6–12 years
0.001336	3.93	12.15	13–19 years
0.001788	5.26	16.25	Females 13–49 years
0.001788	5.26	16.25	Males 20–49 years
0.001577	4.64	14.34	Adults 50+ years
0.001647	4.84	14.97	

Results of the chronic and acute dietary exposure analysis demonstrate a reasonable certainty that no harm to the general U.S. population or any subpopulation would results from the use of pyraclostrobin on brassica (head & stem), lettuce (head & leaf), and leaves of root and tuber vegetables.

To ensure that these additional uses on the proposed crops fits within the total risk cup, a dietary exposure assessment (as described above considering 100% CT and residue values) was conducted with the most sensitive subpopulation (females 13–49 years) using all previously registered and current proposed crops for pyraclostrobin. The dietary risk assessment conducted by the EPA and published in the **Federal Register** (Vol 67, No. 188, p 60886 60902) showed that the acute dietary exposure for all subpopulation groups (except females 13–50 years of age) was < 1% of the aPAD. For females 13 50 years of age, the acute dietary exposure accounted for 41% of the aPAD. The EPA dietary assessment was considered partially refined and somewhat conservative since the percent crop treated data, some concentration factors, and tolerance levels were used. The total acute dietary exposure for females 13–49 years of age from currently registered and proposed new uses accounts for 63.87% (22.87 + 41 = 63.87) of the aPAD. The dietary risk assessment conducted by the EPA and published in the Federal Register showed that the highest chronic dietary exposure (74% of the cPAD) occurred in children 1–6 years of age. The total chronic dietary exposure for children 1–6 years of age from currently registered and proposed new uses accounts for 88.64% (14.64 + 74 = 88.64) of the cPAD.

2. Drinking Water

There are no established maximum contaminant levels or health advisory levels for residues of pyraclostrobin (BAS 500 F) or its metabolite in drinking water. A tier 1 drinking water modeling assessment for pyraclostrobin using the FIRST model (for surface water) and SCI-GROW (for ground water) produced estimated maximum concentrations of 20.4 ppb (acute surface water), 0.74 parts per billion (ppb) (chronic surface water) and 0.009 ppb (acute and chronic groundwater). These estimated concentrations are less than worst-case calculated acceptable drinking water levels of concern (DWLOC) of pyraclostrobin residues in drinking water based on acute and chronic aggregate exposure for both registered and pending crops (see table below).

	Child	Adult female	Adult male
	(1–6 years)	(13–49 years)	(20–49 years)
water consumption (L)	1	2	2
weight kilogram (kg)	10	60	70
cPAD (mg/kg bwt/day)	0.011	0.011	0.011
food exposure (mg/kg bwt/day) chronic	0.00981	0.00398	0.004377
Max. water exposure (mg/kg bwt/day)-chronic	0.00119	0.00702	0.006623
DWLOC (µg/L) chronic	11.9	210.6	231.8
aPAD (mg/kg bwt/day)	3	0.017	3

	Child	Adult female	Adult male
Food exposure (mg/kg bwt/day) - acute	0.02521	0.01068	0.011705
max. waterexposure (mg/kg bwt/day)-acute	2.97479	0.00632	2.988295
DWLOC (µg/L) - acute	29747.9	189.6	104590

3. Aggregate Exposure (Diet + Water)

The aggregate exposure of pyraclostrobin residues is summarized in the table below. Although, BASF has submitted an application for registration of pyraclostrobin in residential turf areas (March 2000), this particular use has been reserved pending the outcome of EPA reviews of additional toxicology studies submitted by BASF, and therefore, residential exposure was not included in the aggregate exposure assessment.

Exposure	Infants (0-1 years)	Children (1–6 years)	Males (20–49 years)	Women (13–50 years)
FOOD (mg/kg bwt/day)				
Acute Exposure (registered uses)	0.014	0.022	0.0083	0.0068
Acute Exposure (new uses)	0.00045	0.003215	0.003405	0.003888
Total acute exposure	0.01445	0.025215	0.011705	0.010688
Chronic Exposure (registered uses)	0.0034	0.0082	0.0028	0.0022
Chronic Exposure (new uses)	0.0002888	0.00161	0.001577	0.001788
Total Chronic Exposure	0.0036888	0.00981	0.004377	0.003988
%aPAD	0.48	0.84	0.39	62.87
%cPAD	33.53	89.18	39.79	36.25
WATER				
Acute Exposure (mg/kg b.w./day)	0.00204	0.00136	0.000583	0.000648
Chronic Exposure (mg/kg b.w./day)	0.0000009	0.0000006	0.0000003	0.0000003
%aPAD	0.07	0.05	0.02	3.81
%aPAD	0.003	0.002	0.001	0.001
AGGREGATE				
Acute Exposure (mg/kg bwt/day)	0.01649	0.026575	0.012288	0.011336
Chronic Exposure (mg/kg bwt/day)	0.0036897	0.0098106	0.0043773	0.0039883
%aPAD	0.55	0.89	0.41	66.68
%aPAD	33.54	89.19	39.79	36.26

These results indicate the aggregate exposure of pyraclostrobin (registered use and the proposed crops in this document), from potential residues in food and water, will not exceed the U.S. EPA's level of concern (100% of PAD). Overall, we can conclude with reasonable certainty that no harm will occur from either acute or chronic aggregate exposure of pyraclostrobin residues.

D. Cumulative Effects.

Section 408(b)(2)(D)(v) 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.' Pyraclostrobin is a foliar fungicide which belongs to the new class of strobilurin chemistry. It is a synthetic analog of strobilurin A, a naturally occurring antifungal metabolite of the mushroom Strobillurus tenacellus (Anke et. al., 1977). The active ingredient acts in the fungal cell through inhibition of electron transport in the mitochondrial respiratory chain at the position of the cytochrome-bc1 complex. The protective effect is due to the resultant death of the fungal cells by disorganization of the fungal membrane

system. Pyraclostrobin also acts curatively to prevent the increase and spread of fungal infections by inhibiting mycelial growth and sporulation on the leaf surface. BAS 500F inhibits spore germination, germ tube growth and penetration into the host tissues.

The EPA is currently developing methodology to perform cumulative risk assessments. At this time, there is no available data to determine whether BAS 500F 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, pyraclostrobin does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination.

U.S. population. Adding the proposed uses to those crops already on the pyraclostrobin label, aggregate exposure to adults in the U.S. population utilized at most 67% of the aPAD and 40% of the cPAD. Therefore, no harm to the overall U.S. population would result from the use of pyraclostrobin on the proposed and existing label crops.

Infants and children. All subpopulations based on age were considered. The highest potential exposure was predicted for children age 1-6. Using the FQPA safety factor of 3X when appropriate, the addition of the proposed crops to those on the label would use less than 1% of the aPAD and use 89% of the cPAD for children age 1–6. BASF concludes that there is reasonable certainty that no harm will result to infants or children from aggregate exposure to pyraclostrobin residues on the proposed and existing label crops.

F. International Tolerances.

Maximum Residue Levels (MRLs) have been established for pyraclostrobin in Canada. No MRLs have been established by the Codex Alimentarius Commission.

[FR Doc. 03–20641 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0260]; FRL–7320–9]

S-Metolachlor; 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–2003–0260, must be received on or before September 12, 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: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368]; e-mail address: *jamerson.hoyt@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–2003–0260. 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–2003–0260. 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–2003–0260. Incontrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a 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–2003–0260.

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–2003–0260. 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 pesticide petitions 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 these petitions contain 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 these petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by Syngenta Crop Protection, 410 Swing Road, Greeensboro, NC 276419, and represents the view of the Syngenta Crop Protection. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection

PP 7E4916, 8E5029, 8E5030, 9E6055, and 2E6374

EPA has received pesticide petitions (7E4916, 8E5029, 8E5030, 9E6055, and 2E6374) from the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of s-metolachlor and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholine, each expressed as the parent compound s-metolachlor in or on the following raw agricultural commodities:

1. PP 4E4420 proposes the establishment of tolerances for pepper, bell and pepper, nonbell at 0.50 part per million (ppm).

2. PP 7E4916 proposes the establishment of a tolerance for carrot, root and horseradish at 0.1 ppm.

3. PP 8E5029 proposes the establishment of a tolerance for rhubarb at 0.1 ppm.

4. PP 8E5030 proposes the establishment of a tolerance for swiss chard at 0.1 ppm.

5. PP 9E6055 proposes the establishment of a tolerance for asparagus at 0.1 ppm.

6. PP 2E6374 proposes the establishment of a tolerance for onion, green at 0.2 ppm.

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 supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism*. [The qualitative nature of S-metolachlor residues in plants is adequately understood based upon available EPA approved corn, potato, and soybean metabolism studies. The metabolism of S-metolachlor involves conjugation with glutathione, breakage of this bond to form the mercaptan, conjugation of the mercaptan with glucuronic acid, hydrolysis of the methyl ether, and conjugation of the resultant alcohol with a neutral sugar. EPA has determined that residues of concern in plants include parent and metabolites, determined as the derivatives CGA-37913 and CGA-49751.

2. *Analytical method*. The Pesticide Analytical Manual (PAM) Vol. II, Pesticide Regulation Section 180.368 lists a gas chromatography/nitrogen phosphorous detector (GC/NPD) method (Method 1) for determining residues in or on plants and a gas chromatography/mass spectrometry methos (GC/MSD) method for determining residues in livestock commodities. These methods determine residues of S-metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis. The limit of quantitation (LOQ) for the method is 0.03 ppm for CGA-37913 and 0.05 ppm for CGA-49751.

3. *Magnitude of residues.*—i. *Asparagus.* Magnitude of residue trials were conducted under the direction of IR-4 in EPA regions 2, 5, and 11 in New Jersey, Michigan, and Washington. Applications were made pre-emergence to dormant asparagus in the spring and samples were collected for analysis 16 days after application. There were no detectable residues found in asparagus at harvest.

ii. *Carrot.* Field trials were conducted in Florida, Michigan, and New York to support the proposed tolerance for S-metolachlor in or on carrots grow on high organic matter (muck) soils.

iii. *Green onion.* Magnitude of residue trials were completed by IR-4 in New York, California, and Michigan (EPA region 1, 10, and 5, respectively). One post-emergence broadcast application was made when the onions had 2 true leaves. Marketable green onion plants were collected 43 to 45 days following the application. Maximum residues found were 0.168 ppm.

iv. *Rhubarb and Swiss chard.* As the EPA review announced in the October 2002 TRED has confirmed that a 0.1 ppm tolerance is appropriate for S-metolachlor in celery and as celery is the representative crop for the Leafy Petiole Subgroup, IR-4 has proposed tolerances be established for rhubarb and Swiss chard.

B. Toxicological Profile

1. *Acute toxicity*. [The data base for acute toxicity for S-metolachlor is complete. S-metolachlor is moderately acutely toxic (Toxicity Category III) by the oral and dermal route and relatively non-toxic (Toxicity category IV) by the inhalation route. It causes slight eye irritation (Toxicity Category III) and is non-irritating dermally (Toxicity Category IV); the active ingredient was found to be positive in a dermal sensitization test but this effect is mitigated in end-use product formulations.]

2. *Genotoxicty*. The data base for S-metolachlor has been deemed to be adequate by EPA. Gene mutation studies (Guideline 870.5100), micronucleus (Guideline 870.5395), and unscheduled DNA synthesis (Guideline 870.5550) studies have recently been reviewed and approved by EPA. There is no evidence of a mutagenic or cytogentic effect *in vivo* or *in vitro* with S-metolachlor.

3. *Reproductive and developmental toxicity*. The data base for developmental and reproductive toxicity for S-metolachlor are considered complete according to EPA reviews. The prenatal developmental studies in the rat and rabbit with S-metolachlor revealed no evidence of a qualitative or quantitative susceptibility in fetal animals. No significant developmental toxicity was observed in most studies even at the highest doses tested. In a two-generation reproduction study, there was no evidence of parental or reproductive toxicity at the highest dose tested (80 mg/kg/day). The results indicate that S-metolachlor is not

embryotoxic or teratogenic in either species at maternally toxic doses.

4. *Subchronic toxicity*. In a 90–day dietary study in rats with S-metolachlor, no effects were observed in male or females at 208 and 236 mg/kg/day, respectively. In another 90–day dietary study in rats, decreased body weight, reduced food consumption and food efficiency in both sexes and increased kidney weight in males at 150 mg/kg/day; the NOAEL was 15 mg/kg/day. A 90–day dog study with S-metolachlor in dogs has been accepted by EPA; no effects were observed in males and females at 62 mg/kg/day and 74 mg/kg/day, respectively, the highest doses tested.

5. *Chronic toxicity*. A combined chronic toxicity/carcinogenic study in the rat satisfies the requirements for both the chronic toxicity and carcinogenicity studies. No significant chronic toxicity was found in either rats or dogs. In the rat, a decrease in body weight was observed at the highest dose tested. In the chronic dog study that supports S-metolachlor, the only adverse effect was decreased body weight gain in females at 33 mg/kg/day; the NOAEL was 10 mg/kg/day.

6. *Animal metabolism*. In animals, S-metolachlor is extensively absorbed, rapidly metabolized and almost totally eliminated in the excreta of rats, goats, and poultry. Metabolism in animals proceeds through common Phase 1 intermediates and glutathione conjugation.

7. *Metabolite toxicology*. The metabolism of S-metolachlor has been well characterized in standard FIFRA metabolism studies. S-metolachlor does not readily undergo dealkylation to form an aniline or quinone imine as has been reported for other members of the chloroacetanilide class of chemicals. Therefore, it is not appropriate to include S-metolachlor with the group of chloroacetanilides that readily undergo dealkylation, producing a common toxic metabolite (quinone imine). New toxicology data submitted by Syngenta demonstrate that the S-metolachlor metabolites ethane sulfonic acid (CGA 354743) and oxanilic acid (CGA 51202) are not absorbed by mammalian systems and / or have a significantly lower level of mammalian toxicity when compared to parent.

8. *Endocrine disruption*. S-Metolachlor does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that S-metolachlor has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in the chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by S-metolachlor, even at maximally tolerated doses administered for a lifetime. There is no evidence that S-metolachlor bioaccumulates in the environment.

C. Aggregate Exposure

1. *Dietary exposure*. A Tier III/IV chronic dietary exposure analysis was conducted on S-metolachlor using field trial and market basket survey residues. Field trial residues were adjusted for percent of crop treated whereas market basket residues were not, since this information is inherent in the data. The percent of crop treated was assumed to be 100% for all commodities for which no percent of crop treated information was available. The chronic assessment was conducted for S-metolachlor using the Dietary Exposure Evaluation Model ($DEEM_{TM}$, version 7.76) by Exponent and food consumption information from USDA's 1994-96 Continuing Survey of Food Intake by Individuals (CSFII) and the Supplemental CSFII children's survey (1998). For this chronic assessment, the field trial values were averaged and entered into the DEEM™ software.

Syngenta Market Basket Survey (SMBS) S-metolachlor data were available for the following commodities: milk, potatoes and tomatoes. The Syngenta market basket survey was conducted from September 1999 through September 2000. Following the Agency tier ranking system, these chronic dietary assessments are considered as Tier III (utilizing field trial data) and Tier IV (utilizing SMBS and PDP data) assessments.

S-metolachlor is not considered acutely toxic and therefore acute dietary exposure was not determined; however, in the October 2002 TRED EPA conducted an acute assessment of the majority of the crops included in this petition and determined acute risks to be <1% of the aPAD in the most exposed population subgroup.

The chronic RfD for S-metolachlor is 0.10 mg/kg body weight/day and is based on a one-year dog study with a NOEL of 9.7 mg/kg body weight/day and a safety factor of 100X. No additional FQPA safety factor is required; nor was applied in this assessment.

i. *Food*. The risk from chronic dietary exposure to S-metolachlor is considered to be very low. The percentages of the chronic RfD ranged from 0.17% for Seniors to 0.64% for Children 1–2 years old, theoretically the most exposure population subgroup.

ii. *Drinking water*. Other potential sources of exposure of the general population to residues of S-metolachlor are residues in drinking water and exposure from non-occupational sources. The degradation of S-metolachlor is microbially mediated with an aerobic soil metabolism primary half-life of less than 30 days and subsequently soil binding predominates. S-metolachlor Koc's vary from 110- 369. S-metolachlor is stable to hydrolysis and while aqueous and soil photolysis occur, they are not expected to be prominent pathways in the environment.

The predominant crop for S-metolachlor is corn and accordingly an Index Reservoir PRZM/EXAMS was run using EPA's standard corn scenario. The model simulated two applications to the same plot: pre-emergence (2.67 kg ai/ha) and post-emergence (1.50 kg a.i./ha). The mean annual average estimated environmental concentrations (EEC) was 11.77 ppb. It should be noted that extensive monitoring data suggests that this EEC is a conservative estimate. For the vast majority of locations sampled, the peak measured concentration does not approach 12 ppb, and the annual average would be expected to be much lower.

The Chronic drinking water levels of concern (DWLOC) was calculated based on a cRfD of 0.097 mg/kg/day. Non-nursing infants are the most sensitive subpopulation and their DWLOC is estimated to be 544 ppb which corresponds to a %cRfD value of 2.2% with an MOE value of 4621. Thus, the DWLOC is considerably higher than the EEC of 11.77 ppb and the MOE is well above the benchmark value of 100.

2. *Non-dietary exposure*. S-metolachlor is labeled for use on warm-season turf and landscape ornamentals. Although, it is primarily used on sod farms and commercial landscape ornamentals, it can be used by licensed pest control operators (PCO) or lawn care operators (LCO) on residential turf. Since S-metolachlor can only be applied to warm-season turf varieties (bermudagrass, Zoysiagrass, St. Augustinegrass, and Centipedegrass), its use on turf is limited to the southern states.

Non-dietary residential exposure may occur to homeowners or children as a result of exposure during re-entry activities. Using surrogate dislodgeable foliar residue data, and conservative standard EPA exposure scenarios, exposure through the dermal route was calculated. Based on the use pattern, which restricts to number of application to one per year, only short-term risks need to be considered. The relevant

toxicological endpoint for short-term dermal risks is the NOEL of 100 mg/kg/day from a 21–day dermal toxicity study in rabbits. No acute oral hazard has been identified following an acute exposure to S-metolachlor and, therefore, no nondietary assessment is needed.

The short-term dermal post-application risks for adults and children are acceptable, ranging from 520 to 870. These risk estimates exceed the EPA's level of concern for S-metolachlor (all MOEs are greater than 100).

Aggregate exposure. (Drinking Water and Dietary Exposure). Using the total MOE equation for the determination of aggregate chronic exposure (food and drinking water only) resulted in an aggregate MOET of >4,000 for the most sensitive subpopulation, non-nursing infants. For this particular subpopulation, there are no non-dietary exposure contributions to the MOET aggregate value.

D. Cumulative Effects

EPA has examined the common mechanism potential for S-metolachlor and has concluded that S-metolachlor should not be included with some pesticides that comprise the class of chloroacetanilides included in a ''Common Mechanism Group.'' Therefore, a cumulative assessment is not necessary for S-metolachlor.

E. Safety Determination

1. *U.S. population*. Based on the aggregate assessment described above and the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to S-metolachlor (including the proposed uses) in food will utilize less than 0.1 percent of the cRfD for the U.S. population. EPA generally has no concern for exposures below 100 percent 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. Despite the potential for exposure to S-metolachlor in drinking water and from non-dietary, non-occupational exposures, the assessment presented above demonstrates that the high levels of safety exist for current and proposed uses of S-metolachlor; it is not expected that aggregate exposure from all sources will exceed 100% of the RfD. Therefore, one can conclude there is a reasonable certainty that no harm will result from aggregate exposure to S-metolachlor.

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 pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. A full consideration of the available reproductive toxicity data supporting S-metolachlor demonstrates no increased sensitivity to infants and children. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that the cRfD at 0.1 mg/kg/day is appropriate for assessing aggregate risk to infants and children from use of S-metolachlor.

Based on the aggregate assessment described above, the percent of the cRfD that will be utilized by aggregate exposure to residues of S-metolachlor is less than 0.7 percent for all children subpopulations. 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. Despite the potential for exposure to S-metolachlor in drinking water and from non-dietary, non-occupational exposure, the assessment described above demonstrates that it is not expected that aggregate exposure from all sources provides for a large margin of safety and will exceed 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the exposure assessment, it is concluded there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to S-metolachlor residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of S-metolachlor in or on raw agricultural commodities.

[FR Doc. 03–20643 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0271; FRL–7322–6]

Etoxazole; 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–2003–0271, must be received on or before September 12, 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: 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 ID number OPP–2003–0271. 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–2003–0271. 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–2003–0271. 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–2003–0271.

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–2003–0271. 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: August 6, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Valent U.S.A. Corporation 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.

Valent U.S.A. Corporation

PP 2F6420

EPA has received a pesticide petition (2F6420) from Valent U.S.A. Corporation, 1333 North California Blvd., Suite 600, Walnut Creek, CA 94596 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of etoxazole in or on the raw agricultural commodity pome fruit (Crop Group 11) at 0.2 parts per million (ppm), apple wet pomace at 1.0 ppm, strawberry at 0.5 ppm, cottonseed at 0.05 ppm, cotton, gin byproducts (gin trash) at 1.0 ppm, and oranges at 0.10 ppm (to support the importation of mandarin oranges into the U.S.). As residues in processed commodities fed to animals may be transferred to milk and edible tissue of ruminants, tolerances are also proposed for animal fat at 0.03 ppm and milk fat at 0.04 ppm.. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism of 14C-etoxazole labeled in the t-butylphenyl, difluorophenyl, or oxazole rings has been studied in apples, cotton, oranges, and eggplants. Etoxazole was rapidly and extensively metabolized to many metabolites in all plants. Even with exaggerated treatment, individual metabolites and parent were only found at very low concentrations. Comparisons of metabolites detected and quantified from plants and animals show that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent etoxazole.

2. *Analytical method*. Practical analytical methods for detecting and measuring levels of etoxazole have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The extraction methodology has been validated using aged radiochemical residue samples from 14_C-metabolism studies. The enforcement methods have been validated in cottonseed, cotton gin trash, and in fresh mandarin oranges at independent laboratories. The LOQ of etoxazole in these methods is 0.01 ppm in mandarin oranges and cottonseed and 0.2 ppm in cotton gin trash, which will allow monitoring of food with residues at the levels proposed for the tolerances. Methods have also been developed and validated for determining etoxazole in animal samples. The LOQ of etoxazole in these methods is 0.02 ppm in milk fat and beef fat.

3. *Magnitude of residues*. An extensive crop residue program has been conducted for etoxazole in all major growing regions of the United States for the following crops: apples and pears (representing pome fruits), strawberries, and cotton. Residue trials have also been conducted for etoxazole in Europe to support the importation of mandarin oranges into the U.S. The results of these studies can be summarized as follows:

- For pome fruit, the maximum etoxazole residues from two applications at 0.135 lbs. active ingredient/acre/treatment, are 0.07 ppm for apples and 0.11 for pears harvested 28 days after application.
- The results of an apple processing study indicate that etoxazole residues do not concentrate in apple juice, but do concentrate in wet apple pomace with an average concentration factor of 5.7x.
- The maximum etoxazole residue in strawberries harvested one day following the last of two treatments at

0.135 lbs. active ingredient/acre/treatment is 0.32 ppm.

- The maximum expected etoxazole residues in cottonseed and cotton gin trash from two applications at 0.045 lbs. active ingredient/acre/treatment applied 28 days before harvest are 0.02 ppm and 0.60 ppm, respectively. Cotton gin trash was also analyzed for metabolite R–3 but was detected in samples from only one of seven test sites at a level only slightly above the 0.10 ppm limit of detection (LOD) (mean residue was 0.13 ppm). Therefore, no tolerance is being proposed for metabolite R–3 in cotton gin trash.
- The results of a cotton processing study indicate that etoxazole does not concentrate in hulls, meal, or oil.
- Following a single application to mandarin oranges of 0.05 lbs. active ingredient/acre, the maximum etoxazole residues in whole fruit harvested 14 days after application is 0.05 ppm.
- No processing of mandarins was required because only fresh or canned mandarins will be imported for direct consumption. Separate analysis of mandarin peel and pulp from residue field trials demonstrated that etoxazole residues are confined to the peel. Canned mandarins that contain only mandarin pulp would therefore not be expected to contain detectable residues of etoxazole.

These field trial data are adequate to support proposed tolerances of 0.2 ppm for pome fruit; 1.0 ppm for wet apple pomace; 0.5 ppm for strawberries; 0.05 ppm for cottonseed; 1.0 ppm in cotton gin trash; and 0.1 ppm in oranges.

Apple pomace and all cotton commodities are significant feed items for beef and dairy cattle and results of a goat metabolism study suggest the possibility that etoxazole residues in feed may transfer to edible tissues and milk. Therefore, a cow feeding study was conducted with etoxazole to determine the level of secondary residues and the need for corresponding tolerances. Etoxazole was detected in fat and cream only and Valent is therefore proposing tolerances of 0.03 ppm in the fat of animals and 0.04 ppm in milk fat. Cotton meal is the only commodity under consideration that is used as a poultry feed item and the results of the cotton processing study indicate that etoxazole residues in this commodity are very low. Additionally, the results of a hen metabolism study demonstrated very low potential for residues in feed to transfer to poultry tissues or eggs. Therefore, no hen residue feeding study was performed and tolerances are not proposed for secondary residues in poultry commodities.

B. Toxicological Profile

A full battery of toxicology testing, including studies of acute, chronic, oncogenicity, developmental, mutagenicity, and reproductive effects has been completed for etoxazole. The acute toxicity of etoxazole is low by all routes. Etoxazole is not a developmental or reproductive toxicant, and is not mutagenic or oncogenic. The toxicology reports for etoxazole have not yet been reviewed by EPA and thus, the Agency has not yet established toxic endpoints of concern, specifically chronic and acute oral toxicity endpoints for the compound. For the purpose of dietary risk analysis, Valent proposes 0.04 mg/kg bwt/day as the chronic Population Adjusted Dose (cPAD) and an acute Population Adjusted Dose (aPAD) of 2 mg/kg bwt/day. The cPAD is based on a chronic endpoint of 4 mg/kg bw/day NOEL for males from the rat chronic/oncogenicity feeding study and an uncertainty factor of 100. The aPAD is based on the 200 mg/kg bwt/day NOEL from the rabbit developmental toxicity study and an uncertainty factor of 100. Valent is unable to identify toxicity endpoints of concern for acute, short-term or chronic human exposures by any route other than oral.

1. *Acute toxicity*. The acute toxicity of technical grade etoxazole is low by all routes. The battery of acute toxicity studies place etoxazole in Toxicity Category III. The oral LD_{50} in the rat was greater than 5 grams/kilogram (g/kg), the dermal LD_{50} was greater than 2.0 g/kg, and the inhalation LC_{50} in the rat was greater than 1.09 milligrams/liter (mg/L). Etoxazole technical was not an irritant to eyes or skin and was not a skin sensitizer.

2. *Genotoxicty*. Etoxazole was evaluated and found to be negative in an Ames reverse mutation assay, a chromosome aberration assay, a micronucleus assay, and an unscheduled DNA synthesis (UDS) assay. Etoxazole produced a positive result in the mouse lymphoma gene mutation assay but only in the presence of metabolic activation. Etoxazole does not present a genetic hazard.

3. *Reproductive and developmental toxicity*.—i. Rat developmental study. Etoxazole did not produce developmental toxicity in rats. Etoxazole technical was administered by oral gavage to pregnant rats at dosage levels of 40, 200, and 1,000 mg/kg/day on days 6 through 15 of gestation. There were no mortalities or treatment-related adverse effects in any dose group. Food consumption was slightly decreased in dams during the dosing period for the 1,000 mg/kg/day group. On cesarean section evaluation there was no differences in number of corpora lutea, number of live and dead fetuses, percent resorption, placental weight, fetal weight or sex ratio in the dams and no treatment-related external, visceral or skeletal malformations noted in any of the fetuses. It was concluded that the maternal no observed adverse effect level (NOAEL) was 200 mg/kg/day, based on decreased food consumption at 1,000 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day, the highest dose tested.

ii. *Rabbit developmental study.* Etoxazole did not produce developmental toxicity in rabbits. Etoxazole technical was administered by oral gavage to pregnant rabbits at dosage levels of 40, 200, and 1,000 mg/kg/day on days 6 through 18 of gestation. No treatment-related adverse effects were found on maternal rabbits in the 40 and 200 mg/kg/day groups. One high dose rabbit died but it is unclear whether this death was attributed to treatment. Decreased body weight, body weight gain, food consumption and enlarged liver were noted at 1,000 mg/kg/day. Cesarean section findings showed that there was no differences in number of *corpora lutea*, number of live and dead fetuses, percent resorptions, placental weight, fetal weight and sex ratio in the dams and showed no treatment-related malformations (external, visceral, skeletal) in any of the fetuses. A statistically significant increased incidence of 27 presacral vertebrae with 13th ribs was observed in fetuses at 1,000 mg/kg/day compared with controls. This finding was within historical control range for fetal incidence but above the historical control range for litter incidence. No dose response was evident and the variation is considered to be equivocally treatment related. The NOAEL for maternal and developmental toxicity was 200 mg/kg/day based on decreased body weight and body weight gain, decreased food consumption, and liver enlargement at 1,000 mg/kg/day. The NOAEL for developmental toxicity was 200 mg/kg/day based on statistically significant increased incidence of 27 presacral vertebrae with 13^{th} ribs in fetuses at 1,000 mg/kg/day.

iii. *Rat reproduction study.* Etoxazole showed no effects on reproduction in a two-generation rat study. Etoxazole technical was fed to two generations of male and female Sprague Dawley rats at dietary concentrations of 80, 400, and 2,000 ppm. No treatment-related adverse effects were observed in the 80 and 400 ppm groups for any parameter. In the 2,000 ppm group, relative liver

weights were increased in the F0 and F1 parental males. No adverse reproductive effects were noted at any dose level in the incidence of normal estrous cycle, mating index, fertility and gestation indices, the number of implantation sites, and duration of gestation in F0 and F1 parental animals. For the offspring, it was noted that at 2,000 ppm, the viability index on lactation Day 4 was significantly lower in the F1 pups and body weights were lowered in pups during the latter half of the lactation period. For the F0 and F1 pups of the 80 and 400 ppm groups, there were no treatment-related adverse effects observed for any parameter, i.e. mean number of pups delivered, sex ratio, viability indices on lactation days 0, 4 and 21, clinical signs, body weights and gross pathological findings. The parental NOAEL was 400 ppm (17.0 mg/kg/day) based on the effects on relative liver weight in males at 2,000 ppm. The pup NOAEL was 400 ppm (37.9 mg/kg/day) based on decreased viability on lactation Day 4 and decreased body weight at 2,000 ppm in the F1 pups. The reproductive NOAEL was 2,000 ppm (86.4 mg/kg/day), the highest dose tested.

4. *Subchronic toxicity.* Subchronic toxicity studies conducted with etoxazole technical in the rat (oral and dermal), mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of anemia and histological changes in the adrenal gland, liver and kidneys.

i. Rat feeding study: A 90–day subchronic toxicity study was conducted in rats, with dietary intake levels of 100, 300, 1,000 and 3,000 ppm etoxazole technical. The NOAEL was 100 ppm for males and 300 ppm for females based on increased incidence of hepatocellular swelling at 1,000 ppm and 3,000 ppm.

ii. *Mouse feeding study.* A 90–day subchronic toxicity study was conducted in mice, with dietary intake levels of 100, 400, 1,600, and 6,400 ppm etoxazole technical. The NOAEL was 400 ppm for males and 1,600 ppm for females based on increased alkaline phosphatase activity, increased liver weights, and increased incidence of hepatocellular swelling at 6,400 ppm (both sexes) and at 1,600 ppm in males and enlarged livers in females at 6,400 ppm.

iii. *Dog feeding study.* Etoxazole technical was fed to male and female Beagle dogs for 13 weeks at dietary concentrations of 200, 2,000, and 10,000 ppm. The NOAEL was 200 ppm (5.3 mg/kg/day) based on clinical signs, clinical pathology changes, liver weight effects and histopathological changes at 2,000 and 10,000 ppm.

iv. *Repeated dose dermal study.* A 28–day dermal toxicity study was conducted in rats at dose levels of 30, 100, and 1,000 mg/kg. There were no treatment related changes in any of the parameters monitored. The NOAEL was 1,000 mg/kg, the highest dose tested.

5. *Chronic toxicity.* Etoxazole technical has been tested in chronic studies with dogs, rats and mice. Valent proposes a chronic oral endpoint of 4 mg/kg bwt/day, based on the NOAEL for male rats in a two-year chronic toxicity oncogenicity feeding study.

i. *Dog chronic feeding study.* Etoxazole technical was fed to male and female beagle dogs for one year at dietary concentrations of 200, 1,000, and 5,000 ppm. The NOAEL was 200 ppm (4.6 mg/kg/day for males and 4.79 mg/kg/day for females) based on increased absolute and relative liver weights with corresponding histopathological changes in the liver at 1,000 and 5,000 ppm.

ii. *Rat chronic feeding/oncogenicity study.* Etoxazole was not oncogenic in rats in either of two chronic feeding studies conducted. In the first study, etoxazole technical was fed to male and female Sprague Dawley rats for two years at dietary concentrations of 4, 16, and 64 mg/kg/day. A trend toward decreased body weight gain for males at 64 mg/kg/day in the latter half of the study was observed. Hemotology and clinical chemistry changes, increased liver weights and hepatic enlargement at 16 mg/kg/day or above were observed. Testicular masses, centrilobular hepatocellular swelling and testicular interstitial (Leydig) cell tumors occurred at or above 16 mg/kg/day. The interstitial (Leydig) cell tumors were believed to be incidental. The NOAEL was 4 mg/kg/day for males and 16 mg/kg/day for females. Because an MTD level was not achieved in this study, a second study was conducted in which etoxazole technical was fed to male and female Sprague Dawley rats for two years at dietary concentrations of 50, 5,000, and 10,000 ppm. In this study, decreased mortality, bodyweight and food consumption/ efficiency (females) at 10,000 ppm was observed. Hematological, clinical, and histopathological changes of the incisors, and increased liver weights occurred in both sexes at 5,000 and 10,000 ppm.

Centrilobular hepatocellular hypertrophy was observed in both sexes at 10,000 ppm. The interstitial (Leydig) cell tumors observed in the first study, were not observed in the repeat study. The NOAEL in the repeat study was 50 ppm (1.8 mg/kg/day).

iii. *Mouse oncogenicity study.* Etoxazole was not oncogenic in either of two mouse oncogenicity studies conducted. In the first study, etoxazole technical was fed to male and female CD-1 mice for 18 months at dietary concentrations of 15, 60, and 240 mg/kg/day. Increased liver weights occurred in females at the highest dose tested. Histopathology parameters were altered for males at 240 mg/kg/day. No neoplastic lesions were observed at any dose level. The NOAEL was 60 mg/kg/day. Since the toxicity in this study was minimal and did not meet the definition of MTD, a second study was conducted at dose levels of 2,250 and 4,500 ppm etoxazole. There were no effects in any group on clinical observations, mortality, body weight, food consumption or hematology. Females showed a significant elevation in relative liver weight after 52 weeks of treatment at 4,500 ppm. In histopathology, a significantly higher incidence of centrilobular hepatocellular fatty change was observed in males in the 4,500 ppm group necropsied after 78 weeks of treatment. There were no treatment-related changes in either sex of the 2,250 ppm dose group. No increase in neoplastic lesions were observed in any treated group of either sex. Therefore, it was concluded that the no observed effect level is 2,250 ppm (242 mg/kg/day for the males and 243 mg/kg/day for the females).

6. *Animal metabolism.* The absorption, tissue distribution, metabolism and excretion of etoxazole were studied in rats after single oral doses of 5 or 500 mg/kg, and after 14 daily oral doses at 5 mg/kg. Etoxazole, labeled in both the t-butylphenyl ring and the oxazole ring were used in this study. For both single dose groups, most (94–97%) of the administered radiolabel was excreted in the urine and feces within seven days after dosing. Most of this excretion occurred in the first 48 hours after dosing. Maximum plasma concentrations occurred 2–4 hours after dosing, with half-lives ranging from 53–89 hours at the low dose and 7–44 hours at the high dose. Plasma levels were significantly lower in females. Concentrations of radioactivity were significantly higher in the tissues of male rats compared to females. The highest concentrations occurred at 3 hours after dosing and were greatest in the gastrointestinal tract and tissues such as liver and kidneys, which are responsible for metabolism and excretion. By 168 hours, the concentration in most tissues was below

the concentration in the corresponding plasma, with only the liver and fat having significant levels of radioactivity. After multiple doses, peak concentrations of radioactivity in tissues occurred 2 hours after dosing and then declined. The distribution of radioactivity showed a similar profile to those found after single oral doses but were significantly higher, indicating some accumulation. Etoxazole was extensively metabolized by rats. The main metabolic reactions in rats were postulated to be hydroxylation of the 4,5-hydrooxazole ring followed by cleavage of the molecule and hydroxylation of the t-butyl side chain.

7. *Metabolite toxicology*. In an oral toxicity limit test in rats, the oral LD_{50} of metabolite R-3 was estimated to be greater than 5 g/kg for both male and female rats. No treatment related body weight changes and no treatment related macroscopic abnormalities were observed in this study. In another test, the oral toxicity of metabolite R-7 (as the HCl salt) was assessed. The oral LD_{50} of this metabolite was also estimated to be greater than 5 g/kg for both male and female rats. No treatment related macroscopic abnormalities were observed in this test although some clinical signs were observed within six minutes of dosing. Mutagenicity screens were performed with metabolite R-3 and metabolite R-7 (as the HCl salt). Neither metabolite was mutagenic when tested with multiple strains of two bacterial cultures (*Salmonella typhimurium* and *Escherichia coli).*

8. *Endocrine disruption*. No special studies to investigate the potential for estrogenic or other endocrine effects of etoxazole have been performed. However, as summarized above, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long term exposures. These studies are considered capable of revealing endocrine effects. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that etoxazole does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure*. A full battery of toxicology testing including studies of acute, chronic, oncogenicity, developmental, mutagenicity, and reproductive effects is available for etoxazole. EPA has not had the opportunity to review all of the toxicity studies on etoxazole and has not established toxic endpoints. Thus, in these risk assessments Valent proposes as the chronic oral toxic endpoint the NOAEL for males from the rat chronic/oncogenicity feeding study, 4 mg/kg/day. To assess the chronic risk to the U.S. population from exposure to etoxazole, the daily chronic exposures were compared against an estimated chronic population adjusted dose (cPAD) of 0.04 mg/kg bwt/day. This endpoint is derived from the NOAEL from the 2–year chronic rat study by applying an uncertainty factor of 100 to account for intraspecies and interspecies variations. There is no evidence that any additional safety factors are needed to further protect vulnerable subpopulations. The proposed acute oral toxic endpoint is the NOAEL from the rabbit oral developmental toxicity study, 200 mg/kg/day. To assess the acute risk to the U.S. population from exposure to etoxazole, acute exposures were compared against an estimated acute population adjusted dose (aPAD) of 2 mg/kg bwt/day. This endpoint is derived from the NOAEL from the rabbit oral developmental toxicity study by applying an uncertainty factor of 100 to account for intraspecies and interspecies variations. Based on dietary, drinking water, and non-occupational exposure assessments, there is reasonable certainty of no harm to the U.S. population, any population subgroup, or infants and children from short-term or chronic exposure to etoxazole.

i. *Food*. Dietary exposure was estimated using DEEM™, proposed tolerances, and assuming 100% crop treated. Results of the acute analysis demonstrate that estimated exposure is 0.5% or less of the estimated aPAD (at the 95th percentile) for all population groups examined. Acute dietary exposure for the overall U.S. population was estimated to be 0.002572 mg/kg bwt/day at the 95th percentile of exposure (0.13% of the aPAD). Chronic dietary exposure was estimated for the overall U.S. population and 25 population sub groups. Daily exposure for the overall U.S. population was estimated to be 0.000574 mg/kg bwt/day, representing 1.4% of the estimated cPAD. Daily exposure for the most highly exposed population subgroup, children 1–6 years of age, was estimated to be 0.002293 mg/kg bwt/day, or 5.7% of the estimated cPAD.

ii. *Drinking water*. Since etoxazole is applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach ground or surface water that may be used for drinking water. But, because of the physical properties of etoxazole, it is unlikely that etoxazole or its metabolites can leach to potable groundwater. Although, relatively stable to hydrolysis, etoxazole undergoes fairly rapid photolysis, degrades fairly readily in soil and is immobile in all soil types examined. To quantify potential exposure from drinking water, FIRST and SCI-GROW models were used to estimate surface and groundwater residues. Estimated surface water residues were much higher than estimated groundwater residues and therefore the surface residues were used as the drinking water environmental concentration (DWEC). The peak (acute) concentration predicted in the simulated pond water was estimated to be 2.47 ppb and the annual average (chronic) concentration predicted in the simulated pond water was estimated to be 1.93 ppb. To assess the contribution to the dietary risk from exposure to drinking water containing residues of etoxazole, these DWEC's are compared to drinking water levels of comparison (DWLOC's), the maximum drinking water concentration allowed before combined water, dietary, and other exposures will exceed the population adjusted doses. If the DWLOC is greater than the DWEC, then overall exposure will not exceed the population adjusted doses and combined exposure from water and food is considered to be acceptable. Acute DWLOC's for etoxazole range from 19,900 to 69,910 ppb and chronic DWLOC's range from 377 to1380 ppb for all U.S. population subgroups examined. Since these DWLOC's exceed the modeled acute and chronic DWEC surface water residues by a wide margin, Valent concludes that exposure to potential residues in drinking water is negligible and that aggregate (food and water) exposure to etoxazole residues will be acceptable.

2. *Non-dietary exposure*. Etoxazole is proposed only for agricultural uses and no homeowner or turf uses. Thus, no non-dietary risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of

toxicity and conducting cumulative risk assessments. For most pesticides, although, the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

In consideration of potential cumulative effects of etoxazole and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by etoxazole would be cumulative with those of other chemical compounds. Thus, only the potential risks of etoxazole have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of etoxazole consistent with the schedule established by EPA at 62 **Federal Register** 42020 (Aug. 4, 1997) and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.*—i. *Acute risk.* The potential acute exposure from food to the U.S. population and various non-child/infant population subgroups are estimated to be 0.06 to 0.13 % of the proposed aPAD. Exposure to potential acute residues in drinking water is expected to be negligible, as acute DWLOC's are substantially higher than modeled acute DWEC's. Based on this assessment, Valent concludes that there is a reasonable certainty that no harm to the U.S. population or any population subgroup will result from acute exposure to etoxazole.

ii. *Chronic risk.* The potential chronic exposure from food to the U.S. population and various non-child/infant population subgroups are estimated to be 0.7% to 1.9% of the proposed cPAD. Chronic exposure to potential residues in drinking water is also expected to be negligible, as chronic DWLOC's are substantially higher than modeled chronic DWEC's. Based on this assessment, Valent concludes that there is a reasonable certainty that no harm to the U.S. population or any population subgroup will result from chronic exposure to etoxazole.

2. *Infants and children.*—i. *Safety Factor for Infants and Children.* In assessing the potential for additional sensitivity of infants and children to residues of etoxazole, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children. The toxicological data base for evaluating prenatal and postnatal toxicity for etoxazole is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent has concluded that reliable data support use of the standard 100–fold uncertainty factor and that an additional uncertainty factor is not needed for etoxazole to be further protective of infants and children.

ii. *Acute risk.* The potential acute exposure from food to infants and children are estimated to be 0.16 to 0.50 % of the proposed aPAD. Exposure to potential acute residues in drinking water is expected to be negligible, as acute DWLOC's are substantially higher than modeled acute DWEC's. Based on this assessment, Valent concludes that there is a reasonable certainty that no harm to infants and children will result from acute exposure to etoxazole.

iii. *Chronic risk.* The potential chronic exposure from food to infants and children are estimated to be 2.1 to 5.7% of the proposed cPAD. Chronic exposure to potential residues in drinking water is expected to be negligible, as chronic DWLOC's are substantially higher than modeled DWEC's. Based on this assessment, Valent concludes that there is a reasonable certainty that no harm to infants and children will result from chronic exposure to etoxazole.

3. *Safety determination summary.* Aggregate acute or chronic dietary exposure to various sub-populations of children and adults demonstrate acceptable risk. Acute and chronic dietary exposures to etoxazole occupy considerably less than 100% of the appropriate PAD. EPA generally has no concern for exposures below 100% of the acute and chronic PAD's because these represent levels at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Chronic and acute dietary risk to children from etoxazole should not be of concern. Further, etoxazole has only agricultural uses and no other uses, such as indoor pest control, homeowner or turf, that could lead to unique, enhanced exposures to vulnerable sub-groups of the population. Valent concludes that there is a reasonable certainty that no harm will result to the U.S. population or to any sub-group of the U.S. population, including infants and children, from aggregate chronic or aggregate acute exposures to etoxazole residues resulting from proposed uses.

F. International Tolerances

Etoxazole has not been evaluated by the JMPR and there are no Codex Maximum Residue Limits (MRL) for etoxazole. MRL values have been established to allow the following uses of etoxazole in the following countries: Turkey, Israel, South Africa, Japan, France, Taiwan, and Korea. The use pattern and MRL's are similar to those proposed for the U.S.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7543–8]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Response Costs for the Amenia Town Landfill Superfund Site, Town of Amenia, Dutchess County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Amenia Town Landfill Superfund Site (''Site'') located in the Town of Amenia, Dutchess County, New York. The settlement requires the settling parties, Town of Amenia, New York; Ashland, Inc.; BP America Inc.; Curtiss-Wright Corporation; International Business Machines Corporation; Alastair B. Martin; Estate of Edith Martin; Metal Improvement Company, Inc.; Town of Sharon, Connecticut; Syngenta Crop Protection, Inc.; TBG Services, Inc.; Unisys Corporation; and Weyerhaeuser Company to pay $361,873.17 in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their

payments. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 12, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Amenia Town Landfill Superfund Site located in the Town of Amenia, Dutchess County, New York, Index No. CERCLA–02–2003–2029. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3171.

Dated: July 31, 2003.

George Pavlou, Director,

Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 03–20639 Filed 8–12–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7543–4]

Notice of Approval of Submission to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of approval of the submission by the State of New York to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System pursuant to section 118(c) of the Clean Water Act and the Water Quality Guidance for the Great Lakes System, as amended.

DATES: EPA's approval is effective on August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Wayne Jackson, U.S. EPA, Region 2, 290 Broadway, New York, NY, or telephone him at (212) 637–3807. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA Region 2, 290 Broadway, New York, NY. Appointments may be made by calling Mr. Jackson.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance). *See* 60 FR 15366. The 1995 Guidance established minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the 1995 Guidance specified numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provided methodologies to derive numeric criteria for additional pollutants discharged to these waters. The 1995 Guidance also contained minimum implementation procedures and an antidegradation policy.

The 1995 Guidance, which was codified at 40 CFR part 132, required the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act (CWA) or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days after the notification, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al.* v. *EPA,* 115 F.3d 979 (D.C. Cir. 1997)); however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had ''failed to address whether the measure is cost-justified,'' and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court's remand, EPA reexamined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, on November 13, 2000, EPA published the final rule amending the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in Appendix F, Procedure 3.C of 40 CFR part 132. As amended, the Guidance requires that States adopt mixing zone provisions that prohibit mixing zones for new discharges of BCCs effective immediately upon adoption of the provision by the State, and to prohibit mixing zones for existing discharges of BCCs after November 15, 2010, except where a mixing zone is determined by the State to be necessary to support water conservation measures and overall load reductions of BCCs or where a mixing zone is determined by the State to be necessary for technical or economic reasons. Under the amended Guidance, States were given two years to adopt and submit revised water quality standards conforming with the amended Guidance.

New York's regulations banning for mixing zones for BCCs are found at 6NYCRR Part 750 State Pollutant Discharge Elimination System (SPDES) Permits, Subparts 750–1.11(a)(5)(i) and 750–1.11(a)(5)(ii), ''Application of standards, limitations and other requirements.'' They were adopted on February 11, 2003, and the revisions were filed with the New York State Department of State on April 11, 2003, and became effective on May 11, 2003. In accordance with Section 303(c)(2)(A) of the Clean Water Act (CWA) and 40 CFR 131.20(c), the New York State Department of Environmental Conservation (NYSDEC) forwarded the amended regulation to the U.S. Environmental Protection Agency (EPA)

on June 6, 2003, and we received it on June 6, 2003.

EPA has conducted its review of New York's submission to prohibit mixing zones for BCCs in the Great Lakes System in accordance with the requirements of Section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are ''consistent with'' the Guidance. EPA has interpreted the statutory term ''consistent with'' to mean ''as protective as'' the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of the State's standards, policies and procedures, as well as any additional information provided by New York clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed New York's submission to determine its consistency only with respect to Appendix F, Procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to the element of the State's regulation submitted for EPA approval, EPA is approving this provision as a revision to the State's water quality standards under Section 303 of the CWA. EPA is also approving this submission under Section 118 of the CWA. EPA's approval is based on the fact that the State regulations require that the provisions of each issued SPDES permit ensure compliance with the requirements of 40 CFR part 132. The State's submission satisfies the requirements of part 132 by directly incorporating these requirements into the State regulations by reference. While New York does not explicitly require wasteload allocations (WLAs) in total maximum daily loads (TMDLs) to be consistent with part 132, the State does require that all water quality-based effluent limitations (WQBELs) must comply with the BCC mixing zone ban by operation of the new SPDES regulation at 750–1.11(a)(5)(i), regardless of what the TMDL says. This is sufficient for EPA approval because, under EPA's regulations at 40 CFR .122.44(d)(1)(vii), WQBELs must always be based on whichever is more stringent: (A) limitations that are derived from and comply with water quality standards (in this case, the BCC mixing zone ban); or (B) limitations that are consistent with the requirements and assumptions of an approved TMDL. By requiring limitations ''necessary to meet water quality standards, guidance values, effluent limitations or schedules of compliance established pursuant to any state law or regulation consistent with Section 510 of the Act, or the requirements of 40 CFR part 132 (*see* section 750–1.24 of this part),'' the state ensures that water quality-based effluent limitations will comply with the BCC mixing zone ban. In addition, EPA expects that TMDLs for BCCs will be consistent with the BCC mixing zone ban because this requirement is part of the state's water quaity standards, and all TMDLs must be calculated at levels necessary to implement the applicable water quality standards. EPA is taking no action at this time with respect to other revisions that New York may have made to its NPDES program or water quality standards in areas not addressed by the Guidance or applicable outside of the Great Lakes System.

William Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 03–20527 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0063; FRL–7542–9]

Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comment.

SUMMARY: In a July 11, 2003, memorandum, the Environmental Protection Agency (EPA) issued, as an Interim Statement and Guidance, an interpretation of the Clean Water Act (CWA) to resolve jurisdictional issues pertaining to pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that are applied to waters of the United States. The interpretation addresses two sets of circumstances for which EPA believes that the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA does not constitute the discharge of a pollutant that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act: the application of pesticides directly to waters of the United States in order to control pests (for example mosquito larvae or aquatic weeds that are present in the water) and the application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticide being deposited to waters of the United States (for example when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied for control of adult mosquitoes). EPA issued this statement pursuant to its authority under Section 301 of the Clean Water Act. EPA is soliciting and will consider comment on this interim statement and guidance before determining a final Agency position.

DATES: Comments on this notice must be received or postmarked on or before midnight October 14, 2003.

ADDRESSES: Public comments regarding this notice may be submitted electronically, by mail, or through hand delivery/courier. Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0063. For additional information on other ways to submit comments, see **SUPPLEMENTARY INFORMATION**, How May I Submit Comments?

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Louis Eby, Office of Wastewater Management, at (202) 564–6599, or Arty Williams, Office of Pesticide Programs, at (703) 305–5239.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2003–0063. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Public Reading Room is open from 8:30 a.m. to 4:30 p.m, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and

for the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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 section I.A.1.

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.

B. 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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. (To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'') Once in the system, select ''search,'' and then key in Docket ID No. OW–2003–0063. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2003–0063. 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 section I.B.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. Please submit an original and three copies of your written comments and enclosures to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0063.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20004, Attention Docket ID No. OW–2003–0063. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Text of the Memorandum

The text of the Memorandum follows:

MEMORANDUM

SUBJECT: Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA

FROM: G. Tracy Mehan, III (signed and dated, July 11, 2003) Assistant Administrator for Water (4101) Stephen L. Johnson (signed and dated, July 11, 2003) Assistant Administrator for Prevention, Pesticides and Toxic Substances (7101)

TO: Regional Administrators, Regions I–X

The Environmental Protection Agency (EPA) is issuing this interpretation of the Clean Water Act (CWA) to address jurisdictional issues under the CWA pertaining to pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that are applied to waters of the United States. This Memorandum is issued, in part, in response to a statement by the U.S. Court of Appeals for the Second Circuit in Altman v. Town of Amherst that highlighted the need for EPA to articulate a clear interpretation of whether National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the CWA are required for applications of pesticides that comply with relevant requirements of FIFRA. EPA will solicit comment on this interim statement through the **Federal Register** prior to determining a final agency position. Until that position is made final, however, the application of pesticides in compliance with relevant FIFRA requirements is not subject to NPDES permitting requirements, as described in this statement.

EPA will continue to review the variety of circumstances in which questions have been raised about whether applications of pesticides to waters of the U.S. are regulated under the CWA. As EPA determines the appropriate response to these circumstances, we will develop additional guidance. This memorandum addresses two sets of circumstances for which EPA believes that the application of a pesticide to waters of the United States consistent with all relevant requirements of FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit under the Clean Water Act:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae or aquatic weeds that are present in the waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States that results in a portion of the pesticides being deposited to waters of the United States; for example, when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when insecticides are applied over water for control of adult mosquitos.

It is the Agency's position that these types of applications do not require NPDES permits under the Clean Water Act if the pesticides are applied consistent with all relevant requirements of FIFRA. Applications of pesticides in violation of the relevant requirements of FIFRA would be subject to enforcement under any and all appropriate statutes including, but not limited to FIFRA and the Clean Water Act. This interpretation also does not preclude or nullify any existing authority vested with States or Tribes to impose additional requirements on the use of pesticides to address water quality issues to the extent authorized by federal, state or tribal law.

Background and Rationale

In this interim statement and guidance, the Agency construes the Clean Water Act in a manner consistent with how the statute has been administered for more than 30 years. EPA does not issue NPDES permits solely for the direct application of a pesticide to target a pest that is present in or over a water of the United States, nor has it ever stated in any general policy or guidance that an NPDES permit is required for such applications.

In *Headwaters, Inc.* v. *Talent Irrigation District*, the U.S. Court of Appeals for the Ninth Circuit held that an applicator of herbicides was required to obtain an NPDES permit under the circumstances before the court. 243 F.3rd 526 (9th Cir. 2001).[1] The Talent decision caused public health authorities, natural resource managers and others who rely on pesticides great concern and confusion about whether they have a legal obligation to obtain an NPDES permit when applying a pesticide consistent with FIFRA and, if so, the potential impact such a requirement could have on accomplishing their own mission of protecting human health and the environment. Since Talent, only a few States have issued NPDES permits for the application of pesticides. Most state NPDES permit authorities have opted not to require applicators of pesticides to obtain an NPDES permit. In addition, state officials have continued to apply pesticides for public health and resource management purposes without obtaining an NPDES permit. These varying practices reflect the substantial uncertainty among regulators, the regulated community and the public regarding how the Clean Water Act applies to the use of pesticides.

There has been continued litigation and uncertainty following the Talent decision. One such case is *Altman* v. *Town of Amherst* (Altman), which was brought against the Town of Amherst for not having obtained an NPDES permit for its application of pesticides to wetlands as part of a mosquito control program. In September 2002, the Second Circuit remanded the Altman case for further consideration and issued a Summary Order that stated, ''Until the EPA articulates a clear interpretation of current law among other things, whether properly used pesticides released into or over waters of the United States can trigger the requirement for an NPDES permit [or a state-issued permit in the case before the court] the question of whether properly used pesticides can become pollutants that violate the Clean Water Act will remain open.'' 46 Fed. Appx. 62, 67 (2d Cir. 2002).

This Memorandum provides EPA's interpretation of how the CWA currently applies to the two specific circumstances listed above. Under those circumstances, EPA has concluded that the CWA does not require NPDES permits for a pesticide applied consistent with all relevant requirements of FIFRA. This interpretation is consistent with the circumstances before the Ninth Circuit in Talent and with the brief filed by the United States in the Altman case.[2]

Many of the pesticide applications covered by this memorandum are applied either to address public health concerns such as controlling mosquitos or to address natural resource needs such as controlling non-native species or plant matter growth that upsets a sustainable ecosystem. Under FIFRA, EPA is charged to consider the effects of pesticides on the environment by determining, among other things, whether a pesticide ''will perform its intended function without unreasonable adverse effects on the environment,'' and whether ''when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment.'' FIFRA section 3(c)(5).

The application of a pesticide to waters of the U.S. would require an NPDES permit only if it constitutes the ''discharge of a pollutant'' within the meaning of the Clean Water Act.[3] The term ''pollutant'' is defined in section 502(6) of the CWA as follows:

The term ''pollutant'' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

EPA has evaluated whether pesticides applied consistent with FIFRA fall within any of the terms in section 506(2), in particular whether they are ''chemical wastes'' or ''biological materials.'' EPA has concluded that they do not fall within either

[1] In an *amicus* brief filed by the United States in the Talent case, EPA stated that compliance with FIFRA does not necessarily mean compliance with the Clean Water Act. However, the government's Talent brief did not address the question of how pesticide application is regulated under the Clean Water Act or the circumstances in which pesticides are ''pollutants'' under the CWA.

[2] While the court's analysis in Talent did not turn on whether the pesticide application at issue was consistent with the requirements of FIFRA, the factual situation described in the court's opinion constitutes a violation of the applicable FIFRA label because the pesticide applicator failed to contain the herbicide-laden water for the requisite number of days. In its amicus brief in the Altman case, EPA described factors relevant to the determination whether a pesticide may be subject to the CWA, and those factors are consistent with the analysis and interpretation of the Act described below.

[3] This Memorandum addresses circumstances when a pesticide is not a ''pollutant'' that would be subject to NPDES permit requirements when discharged into a water of the United States. It does not address the threshold question of whether these or other types of pesticide applications constitute ''point source'' discharges to waters of the United States.

term. First, EPA does not believe that pesticides applied consistent with FIFRA are ''chemical wastes.'' The term ''waste'' ordinarily means that which is ''eliminated or discarded as no longer useful or required after the completion of a process.'' *The New Oxford American Dictionary* 1905 (Elizabeth J. Jewell & Frank Abate eds., 2001); *see also The American Heritage Dictionary of the English Language* 1942 (Joseph P. Pickett ed., 4th ed. 2000) (defining waste as ''[a]n unusable or unwanted substance or material, such as a waste product''). Pesticides applied consistent with FIFRA are not such wastes; on the contrary, they are EPA-evaluated products designed, purchased and applied to perform their intended purpose of controlling target organisms in the environment.[4] Therefore, EPA concludes that ''chemical wastes'' do not include pesticides applied consistent with FIFRA.

EPA also interprets the term ''biological materials'' not to include pesticides applied consistent with FIFRA. We think it unlikely that Congress intended EPA and the States to issue permits for the discharge into water of any and all material with biological content.[5] With specific regard to biological pesticides, moreover, we think it far more likely that Congress intended not to include biological pesticides within the definition of ''pollutant.'' This interpretation is supported by multiple factors.

EPA's interpretation of ''biological materials'' as not including biological pesticides avoids the nonsensical result of treating biological pesticides as pollutants even though chemical pesticides are not. Since all pesticides applied in a manner consistent with the requirements of FIFRA are EPA-evaluated products that are intended to perform essentially similar functions, disparate treatment would, in EPA's view, not be warranted, and an intention to incorporate such disparate treatment into the statute ought not to be imputed to Congress.[6] Moreover, at the time the Act was adopted in 1972, chemical pesticides were the predominant type of pesticide in use. In light of this fact, it is not surprising that Congress failed to discuss whether biological pesticides were covered by the Act. The fact that more biological pesticides have been developed since passage of the 1972 Act does not, in EPA's view, justify expanding the Act's reach to include such pesticides when there is no evidence that Congress intended them to be covered by the statute in a manner different from chemical pesticides. Finally, many of the biological pesticides in use today are reduced-risk products that produce a more narrow range of potential adverse environmental effects than many chemical pesticides. As a matter of policy, it makes little sense for such products to be subject to CWA permitting requirements when chemical pesticides are not. Caselaw also supports this interpretation. *Ass'n to Protect Hammersley, Eld, and Totten Inlets* v. *Taylor Resources*, 299 F.3d 1007, 1016 (9th Cir. 2002) (application of the *esjudem generis* canon of statutory interpretation supports the view that the CWA ''supports an understanding of * * * 'biological materials,' as waste material of a human or industrial process'').[7]

Under EPA's interpretation, whether a pesticide is a pollutant under the CWA turns on the manner in which it used, *i.e.*, whether its use complies with all relevant requirements of FIFRA. That coverage under the Act turns on the particular circumstances of its use is not remarkable. Indeed, when asked on the Senate floor whether a particular discharge would be regulated, the primary sponsor of the CWA, Senator Muskie (whose views regarding the interpretation of the CWA have been accorded substantial weight over the last four decades), stated:

I do not get into the business of defining or applying these definitions to particular kinds of pollutants. That is an administrative decision to be made by the Administrator. Sometimes a particular kind of matter is a pollutant in one circumstance, and not in another. Senate Debate on S. 2770, Nov. 2, 1971 (117 Cong. Rec. 38,838).

Here, to determine whether a pesticide is a pollutant under the CWA, EPA believes it is appropriate to consider the circumstances of how a pesticide is applied, specifically whether it is applied consistent with relevant requirements under FIFRA. Rather than interpret the statutes so as to impose overlapping and potentially confusing regulatory regimes on the use of pesticides, this interpretation seeks to harmonize the CWA and FIFRA.[8] Under this interpretation, a pesticide applicator is assured that complying with environmental requirements under FIFRA will mean that the activity is not also subject to the distinct NPDES permitting requirements of the CWA. However, like an unpermitted discharge of a pollutant, application of a pesticide in violation of relevant FIFRA requirements would be subject to enforcement under any and all appropriate statutes including, but not limited to, FIFRA and the CWA.

Solicitation of comment on this Interim Statement and Guidance

In the near future, the Agency will seek public comment on this interim statement and guidance in the **Federal Register**. The Agency will review all comments and determine whether changes or clarifications are necessary before issuing final interpretation and guidance.

Please feel free to call us to discuss this memorandum. Your staff may call Louis Eby in the Office of Wastewater Management at (202) 564–6599 or Arty Williams in the Office of Pesticide Programs at (703) 305–5239.

Dated: August 5, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

Dated: August 5, 2003.

Susan B. Hazen,

Principal Deputy Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–20529 Filed 8–12–03; 8:45 am]

BILLING CODE 6560–50–P

[4] Where, however, pesticides are a waste, for example when contained in stormwater regulated under section 402(p) of the CWA or other industrial or municipal discharges, they are pollutants and require a permit when discharged to a water of the U.S.

[5] Taken to its literal extreme, such an interpretation could arguably mean that activities such as fishing with bait would constitute the addition of a pollutant.

[6] Further, some pesticide products may elude classification as strictly ''chemical'' or ''biological.''

[7] EPA's interpretation of section 502(6) with regard to biological pesticides should not be taken to mean that EPA reads the CWA generally to regulate only wastes. EPA notes that other terms in section 502(6) may or may not be limited in whole or in part to wastes, depending on how the substances potentially addressed by those terms are created or used. For example, ''sand'' and ''rock'' can either be discharged as waste or as fill material to create structures in waters of the U.S., and Congress created in section 404 of the Act a specific regulatory program to address such discharges. *See* 67 FR 31129 (May 9, 2002) (subjecting to the section 404 program discharges that have the effect of filling waters of the U.S., including fills constructed for beneficial purposes). The question in any particular case is whether a discharge falls within one of the terms in section 502(6), in light of the factors relevant to the interpretation of that particular term. As discussed above, the factors critical to EPA's interpretation concerning biological pesticides are consistency with section 502(6)'s treatment of chemical pesticides and chemical wastes, and how the general term ''biological materials'' fits within the constellation of other, more specific terms in section 502(6), which to a great extent focuses on wastes.

[8] EPA's *Talent* brief suggested that compliance with FIFRA does not necessarily mean compliance with the CWA, and pointed out one difference between CWA and FIFRA regulation, *i.e.*, individual NPDES permits could address local water quality concerns that might not be specifically addressed through FIFRA's national registration process. The position EPA is articulating in this memo would not preclude state or tribal authorities from further limiting the use of a particular pesticide to address any unique and geographically limited water quality issue to the extent authorized by Federal, State, or tribal law.

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 5, 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 (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 14, 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 B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Composite Interference Contour.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 50.

Estimated Time Per Response: 2 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Needs and Uses: The purpose of this information collection is to enable the geographic licensee to have technical and engineering information regarding a site-based licensee's operations over water in order to guard against unacceptable interference to its own operations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–20535 Filed 8–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

August 7, 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 September 12, 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 August 1, 2003.

OMB Control Number: 3060–XXXX.

Type of Review: New collection.

Title: Broadcast Ownership Rules, R&O in MB Docket No. 02–277 and MM Docket Nos. 02–235, 02–327, and 00–244.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time per Response: 2 to 10 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 12 hours.

Total Annual Cost: None.

Needs and Uses: On June 2, 2003, the Commission adopted a Report and Order and Notice of Proposed Rulemaking (R&O and NPRM) In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02–277, Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01–235, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket No. 01–317, Definition of Radio Markets, MM Docket No. 00–244, and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, MB Docket No. 03–130, FCC 03–127, released July 2, 2003. The R&O, accompanied by the NPRM in MB Docket 03–130, arise from our proceeding, in compliance with Section 202(h) of the Telecommunications Act of 1996 (the Act), which requires that the Commission review its broadcast ownership rules every two years. Generally speaking, the actions adopted in the R&O eliminate or relax regulations on licensees. The actions will modify or eliminate some PRA burdens and also add new showings to assist the Commission in determining that licensees remain in compliance with our rules and policies. The NPRM invites comment on an aspect of the revised market definition for the local radio ownership rule. The R&O contains several one-time reporting requirements which are outside of form collections, affecting licensees with: temporary waivers, conditional waivers, pending waiver requests, extensions of waivers, or requests for permanent waivers. These reporting requirements were adopted to ensure compliance with the new broadcast ownership rules and to ensure the rules' effectiveness.

OMB Control Number: 3060–0031.

Type of Review: Revision of a currently approved collection.

Title: Application for Consent to Assignment of Broadcast Station

Construction Permit or License, FCC Form 314.

Form Number: FCC 314.

Respondents: Business or other for-profit entities; Not-for-profit institution.

Number of Respondents: 1,825.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,800 hours.

Total Annual Cost: $15,572,081.25.

Needs and Uses: FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM or TV broadcast station construction permit or license, along with applicable exhibits and explanations. In addition, the applicant must notify the Commission when an approval assignment of a broadcast station construction permit or license has been consummated. Specific to this collection of information approved under OMB control number 3060–0031, and in accordance with paragraph 498 of the R&O, the Commission will require all applicants to submit an exhibit demonstrating compliance with the Commission's multiple ownership rules and cross-media limits, or supporting an exemption from, or waiver of, 47 CFR 73.3555. With respect to radio station assignment applications, we will require parties to show compliance with the local radio ownership rule using either the interim contour-overlap methodology previously called for in FCC Form 314, or the newly adopted geographic-based Arbitron Metro methodology. Under our modified rules, Joint Sales Agreements (JSAs) will be attributable. A JSA is defined as an agreement with a licensee of a brokered station that authorizes the broker to sell advertising time for the brokered station in return for a fee paid to the licensee. Parties with attributable radio JSAs at the time of filing an FCC Form 314 will now be required to file a copy of the JSA as part of the application. With respect to pending radio station assignment applications, the parties are required to amend their applications by submitting attributable JSAs. In addition, parties with existing attributable JSAs in Arbitron Metro markets will be required to file a copy of the JSA within 60 days of the effective date of the R&O. For JSAs involving radio stations located outside of Arbitron Metros, we will require such JSAs to be filed within 60 days of the effective date of our decision in Docket 03–130, as mentioned above, unless a different date is announced in that decision. With respect to television station assignment applications, the parties will, for the first time, be required to submit an exhibit identifying the relevant Designated Market Area (DMA) as measured by Nielson Research, the number of commercial and noncommercial education stations in the DMA, and the market rankings of the top-four commercial television stations. Radio and television applicants will now also be required to submit as part of FCC Form 314 a copy of any attributable time brokerage agreement (''TBA'') (*see* 47 CFR 73.3613 for definition) pursuant to which the assignee will supply programming to the station(s) subject to the application or with any other station in the same market as the station(s) subject to the application. 47 CFR 73.3613 already required the filing of an TBA within 30 days of execution. On June 2, 2003, the Commission announced by Public Notice, DA 03–1877, that applicants with long-form assignment or transfer of control applications (FCC Form 314 or 315) or with modification applications (FCC Form 301) that were pending as of adoption date of the R&O may amend those applications by submitting new multiple ownership showings to demonstrate compliance with the new rules. Applicants may file such amendments once notice has been published by the Commission in the **Federal Register** that OMB has approved the information collection requirements contained in such amendments. Applicants may also submit a complete and adequate showing supporting a waiver of, or exemption from, the new rules. The Commission has established a freeze on the filing of all commercial radio and television assignment applications that require the use of FCC Form 314. The freeze will be in effect starting with the R&O's adoption date until notice has been published by the Commission in the **Federal Register** that OMB has approved the revised FCC Forms 314. Upon such publication, parties may file new applications, but only if they demonstrate compliance with the new multiple ownership rules adopted in the R&O, or submit complete and adequate showings that a waiver of the new rules is warranted.

OMB Control Number: 3060–0032.

Type of Review: Revision of a currently approved collection.

Title: Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315.

Form Number: FCC 315.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,825.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 3,800 hours.

Total Annual Cost: $15,572,081.25.

Needs and Uses: FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM or TV broadcast station construction permit or license, along with applicable exhibits and explanations. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. Specific to this collection of information approved under OMB control number 3060–0032, and in accordance with paragraph 498 of the R&O, the Commission will require all applicants to submit an exhibit demonstrating compliance with the Commission's multiple ownership rules and cross-media limits, or supporting an exemption from, or waiver of, 47 CFR 73.3555. With respect to radio station transfer of control applications, we will require parties to show compliance with the local radio ownership rule using either the interim contour-overlap methodology previously called for in FCC Form 315, or the newly adopted geographic-based Arbitron Metro methodology. Under our modified rules, Joint Sales Agreements (JSAs) will be attributable. Parties with attributable radio JSAs at the time of filing an FCC Form 315 will now be required to file a copy of the JSA with the application. With respect to pending radio station transfer of control applications, the parties are required to amend their applications by submitting attributable JSAs. In addition, parties with existing attributable JSAs in Arbitron Metro markets will be required to file a copy of the JSA within 60 days of the effective date of the R&O. For JSAs involving radio stations located outside of Arbitron Metros, we will require such JSAs to be filed within 60 days of the effective date of our decision in Docket 03–130, as mentioned above, unless a different date is announced in that decision. With respect to television station transfer of control applications, the parties will, for the first time, be required to submit an exhibit identifying the relevant Designated Market Area (DMA) as measured by Nielson Research, the number of commercial and noncommercial education stations in the DMA, and the market rankings of the top-four

commercial television stations. Radio and television applicants will now also be required to submit as part of FCC Form 315 a copy of any attributable time brokerage agreement (TBA) (*see* 47 CFR 73.3613 for definition) pursuant to which the transferee will supply programming to the station(s) subject to the application, or with any other station in the same market as the station(s) subject to the application 47 CFR 73.3613 already required the filing of an TBA within 30 days of execution. On June 2, 2003, the Commission announced by Public Notice, DA 03–1877, that applicants with long-form assignment or transfer of control applications (FCC Form 314 or 315) or with modification applications (FCC Form 301) that were pending as of adoption date of the R&O may amend those applications by submitting new multiple ownership showings to demonstrate compliance with the new rules. Applicants may file such amendments once notice has been published by the Commission in the **Federal Register** that OMB has approved the information collection requirements contained in such amendments. Applicants may also submit a complete and adequate showing supporting a waiver of, or exemption from, the new rules. The Commission has established a freeze on the filing of all commercial radio and television transfer of control applications that require the use of FCC Form 315. The freeze will be in effect starting with the R&O's adoption date until notice has been published by the Commission in the **Federal Register** that OMB has approved the revised FCC Form 315. Upon such publication, parties may file new applications, but only if they demonstrate compliance with the new multiple ownership rules adopted in the R&O, or submit complete and adequate showings that a waiver of the new rules is warranted.

OMB Control Number: 3060–0027.

Type of Review: Revision of a currently approved collection.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC 301.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,450.

Estimated Time per Response: 2 to 4 hours.

Frequency of Response: On occasion requirements; Third party disclosure.

Total Annual Burden: 5,620 hours.

Total Annual Cost: $28,971,675.00.

Needs and Uses: FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, or to make changes in existing facilities of such a station. In addition, FM licensees or permittees may request, by application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class and downgrades to adjacent channels without first submitting a petition for rulemaking. To receive authorization for commencement of Digital Television (''DTV'') operation, commercial broadcast licensees must file FCC Form 301 for a construction permit. This application may be filed anytime after receiving the initial DTV allotment but must be filed before mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applications will not have to supply full legal or financial qualification information.

Specific to this collection of information approved under OMB control number 3060–0027, the Commission will require all applicants to submit an exhibit demonstrating compliance with the Commission's multiple ownership rules and cross-media limits, or supporting an exemption from, or waiver of, 47 CFR 73.3555. With respect to radio station construction permit applications, we will require parties to show compliance with the local radio ownership rule using either the interim contour-overlap methodology previously called for in FCC Form 301, or the newly adopted geographic-based Arbitron Metro methodology. Under our modified rules Joint Sales Agreements (JSAs) will be attributable. Parties with attributable radio JSAs at the time of filing an FCC Form 301 will now be required to file a copy of the JSA as part of the application. With respect to television station construction permit applications, the parties will, for the first time, be required to submit an exhibit identifying the relevant Designated Market Area (DMA) as measured by Nielson Research, the number of commercial and noncommercial education stations in the DMA, and the market rankings of the top-four commercial television stations. Radio and television applicants are also required to submit a part of FCC Form 301 a copy of any attributable time brokerage agreement (*see* 47 CFR 73.3613 for definition) pursuant to which the applicant will supply programming to the station(s) subject to the application or with any other station in the same market as the station(s) subject to the application. On June 2, 2003, the Commission announced by Public Notice, DA 03–1877, that applicants with FCC Form 301 applications pending as of the adoption date of the R&O may amend those applications by submitting new multiple ownership showings to demonstrate compliance with the new rules. Applicants may file such amendments once notice has been published by the Commission in the **Federal Register** that OMB has approved the information collection requirements contained in such amendments.

Applicants may also submit a complete and adequate showing supporting a waiver of, or exemption from, the new rules.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–20537 Filed 8–12–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011528–023.

Title: Japan/United States Eastbound Freight Conference.

Parties:

American President Lines, Ltd;
Hapag-Lloyd Container Line GmbH;
Kawasaki Kisen Kaisha, Ltd.;
Mitsui O.S.K. Lines, Ltd.;
A.P. Moller Maersk Sealand;
Nippon Yusen Kaisha;
Orient Overseas Container Line Limited;
P&O Nedlloyd B.V.;
P&O Nedlloyd Limited;
and Wallenius Wilhelmsen Lines AS.

Synopsis: The amendment extends the suspension of the conference through January 31, 2004.

Agreement No.: 011859.

Title: TMM/Hanjin Slot Charter Agreement.

Parties:

TMM Lines, Ltd.;
Hanjin Shipping Co., Ltd.

Synopsis: The proposed agreement would authorize TMM to charter

space to Hanjin in the trades between the U.S. West Coast, on the one hand, and Mexico and Asia, on the other.

Agreement No.: 201124–001.

Title: Oakland/Yang Ming Terminal Use Agreement.

Parties:

City of Oakland,

Yang Ming Transport Corporation.

Synopsis: The amendment terminates the parties' terminal use agreement.

By Order of the Federal Maritime Commission.

Dated: August 8, 2003.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–20656 Filed 8–12–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Worldtrans Services, Inc., 8925 Carroll Way, Suite C, San Diego, CA 92121. *Officers:* Tony Carnevale, Vice President, (Qualifying Individual), Charles H. Saathoff, President.

Ocean Lilly Express, LLC, 8501 NW. 17th Street, Suite 101, Miami, FL 33126. *Officers:* Alan Egan, President, (Qualifying Individual), Nelson Cabrera, Vice President.

CTC Logistics (L.A.) Inc., 9111 S. La Cienega Blvd., Suite 205, Inglewood, CA 90301. *Officers:* Ms. Xiaomei Lu, Chief Operations Officer, (Qualifying Individual), Yonglong Li, President.

Caribbean Cargo & Package Services Inc., Building #80 JFK International Airport, Jamaica, NY 11430. *Officers:* Franklin Clifford Vieira, President, (Qualifying Individual), Harold Smith, Director.

Admiral Marine, Inc., 33 Wood Avenue South, Iselin, NJ 08830. *Officers:* Fred Grootarz, President, (Qualifying Individual), Henry Kisiel, Vice President.

Ace Express (New York) Inc., 147–39 175 Street, Suite 101, Jamaica, NY 11434–5463. *Officer:* Ivan P. Hong, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Wen-Parker, Inc., 230–19 International Airport Center Blvd., Suite 238, Jamaica, NY 11413. *Officer:* Weiming New, President, (Qualifying Individual).

Motherlines Inc., 1419 Oak Tree Road, Iselin, NJ 08830. *Officers:* N. Santhosh Kumar, Vice President, (Qualifying Individual), A.B. Sankarankutty, Director.

Kartash, Inc., 11 Sunrise Plaza, Suite 200, Valley Stream, NY 11580. *Officers:* Raisa Kartasheusky, President, (Qualifying Individual), Edward Kartasheusky, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Continental Resource Company, 2639 East Avenue, Hayward, CA 94541. Jack Chiang, Sole Proprietor.

Dated: August 8, 2003.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–20657 Filed 8–12–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Virginia State Plan Amendment (SPA) 02–09

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on September 25, 2003, 10 a.m., Room 217; Second Floor; Suite 216, The Public Ledger Building; 150 South Independence Mall West; Philadelphia, Pennsylvania 19106 to reconsider our decision to disapprove Virginia State Plan Amendment (SPA) 02–09.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision, dated June 16, 2003, to disapprove Virginia State Plan Amendment (SPA) 02–09. This SPA proposes to provide supplemental payment for services rendered by a newly created class of physicians and other health professionals who are State employees affiliated with a State academic medical center. There are two supplemental payment methodologies described in the SPA. The first, effective July 2, 2002, until August 12, 2002, would provide payment equal to the difference between the amount indicated on the Medical Assistance (Medicaid) fee schedule applicable to other providers of the same type, and the lower of Medicare-allowed amount or billed charges. The second method, effective August 13, 2002, would be equal to the difference between the Medicaid fee schedule and providers' usual and customary charges. There is no ceiling on charges during the second period.

At issue is whether the State has documented that its proposed supplemental payment methodology is consistent with efficiency, economy, and quality of care when the supplemental payment methodology: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) pays significantly more than other third party payers for the same services; (3) is not a usual and customary payment methodology; and (4) would unduly complicate tracking and audit processes.

Section 1902 (a)(30)(A) of the Social Security Act (the Act) requires that states have methods and procedures to ensure that payments are consistent with efficiency, economy, and quality of care. The State was unable to document that other third party payers pay an amount equal to billed charges. In addition, the State did not document that the providers affected by this amendment have higher costs than other providers of the same type in the State, nor did it demonstrate that any portion of the increased payment would be required to pay actual costs incurred in order to ensure access to the Medicaid services at issue. Virginia also failed to justify why the supplemental payment is warranted for public providers only.

The supplemental payment methodology proposed by the State is

not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes.

For the above-stated reasons, and after consulting with the Secretary as required by 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 02–09 because CMS concluded that the State had failed to demonstrate that it fulfilled the conditions as specified in section 1902(a)(30)(A) of the Act to ensure that payments are ''consistent with efficiency, economy, and quality of care.''

Section 1116 of the Act and 42 CFR Part 430 establish Departmental procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Virginia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Patrick W. Finnerty, Director,
Virginia Department of Medical Assistance Services,
600 East Broad Street, Suite 1300,
Richmond, VA 23119.

Dear Mr. Finnerty:

I am responding to your request for reconsideration of my decision, dated June 16, 2003, to disapprove Virginia State Plan Amendment (SPA) 02–09. This SPA proposes to provide supplemental payment for services rendered by a newly created class of physicians and other health professionals who are State employees affiliated with a State academic medical center. There are two supplemental payment methodologies described in the SPA. The first, effective July 2, 2002, until August 12, 2002, would provide payment equal to the difference between the amount indicated on the Medical Assistance (Medicaid) fee schedule applicable to other providers of the same type, and the lower of Medicare-allowed amount or billed charges. The second method, effective August 13, 2002, would be equal to the difference between the Medicaid fee schedule and providers' usual and customary charges. There is no ceiling on charges during the second period.

At issue is whether the State has documented that its proposed supplemental payment methodology is consistent with efficiency, economy, and quality of care when the supplemental payment methodology: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) pays significantly more than other third party payers for the same services; (3) is not a usual and customary payment methodology; and (4) would unduly complicate tracking and audit processes.

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that states have methods and procedures to ensure that payments are consistent with efficiency, economy, and quality of care. The State was unable to document that other third party payers pay an amount equal to billed charges. In addition, the State did not document that the providers affected by this amendment have higher costs than other providers of the same type in the State, nor did it demonstrate that any portion of the increased payment would be required to pay actual costs incurred in order to ensure access to the Medicaid services at issue. Virginia also failed to justify why the supplemental payment is warranted for public providers only.

The supplemental payment methodology proposed by the State is not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes.

For the above stated reasons, and after consulting with the Secretary as required by 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 02–09 because CMS concluded that the State had failed to demonstrate that it fulfilled the conditions as specified in section 1902(a)(30)(A) of the Act to ensure that payments are ''consistent with efficiency, economy, and quality of care.'' Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 02–09.

I am scheduling a hearing on your request for reconsideration to be held on September 25, 2003, at 10 a.m., Room 217; Second Floor; Suite 216; The Public Ledger Building; 150 South Independence Mall West; Philadelphia, Pennsylvania 19106 to reconsider our decision to disapprove Virginia SPA 02–09. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 28, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–20672 Filed 8–12–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Licensing Opportunity and Cooperative Research and Development Agreement (CRADA) Opportunity to Develop Therapeutic Uses for the Newly Identified Cardiac Precursor Cells Named ''SPOC'' Cells

AGENCY: National Heart, Lung, and Blood Institute.

ACTION: Notice.

SUMMARY: The National Heart Lung and Blood Institute is seeking licensees and/or CRADA partners to further develop, evaluate, and commercialize therapeutic uses for the newly identified cardiac precursor cells named ''spoc'' cells. The U.S government-owned technology is encompassed within PCT Patent Application No. PCT/US02/33860, entitled, ''Stem Cells that Transform to Beating Cardiomyocytes''.

The NHLBI seeks potential Collaborator(s) wishing to provide expertise in (1) genomics/proteomics and analysis; (2) animal models of heart disease; (3) high throughput drug screening.

Prospective collaborators need only be interested in pursuing a focused aspect of the potential applications.

DATES: Only written CRADA capability statements received by the NHLBI on or before September 29, 2003, will be considered during the initial design phase. Confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the collaborators' expense to provide

additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase if circumstances change or if the design alters substantially.

Inventions described in the patent application(s) are available for either exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404. Respondees interested in licensing the invention(s) should submit an ''Application for License to Public Health Service Inventions.''

FOR FURTHER INFORMATION AND QUESTIONS: Questions about licensing opportunities should be addressed to Fatima Sayyid, M.H.P.M., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Tel: 301–435–4521; Fax: 301–402–0220; E-mail: *sayyidf@mail.nih.gov.* Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement.

Capability statements and questions about this CRADA opportunity should be submitted to Dr. Vincent Kolesnitchenko, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, MSC 7992, Bethesda, MD 20892–7992; Tel: 301–594–4115; Fax: 301–594–3080; E-mail: *kolesniv@nhlbi.nih.gov.*

SUPPLEMENTARY INFORMATION: A CRADA is an agreement designed to enable certain collaborations between the Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. The NHLBI is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NHLBI can contribute facilities, staff, materials, and expertise to the effort. The collaborator typically contributes facilities, staff, materials, expertise, and funding to the collaboration. The CRADA collaborator may elect an option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a predetermined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Respondees interested in licensing the technology will be required to submit an Application for License to Public Health Service Inventions. Inventions described in the patent application(s) are available for either exclusive or non-exclusive licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404. Information about patent application(s) and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement.

Technology Description: Spoc cells are a previously unknown subpopulation of stem cells in adult murine skeletal muscle that can be transformed into beating cardiomyocytes in primary tissue culture. These cells are not satellite cells, myofibroblasts or myoblasts or hematopoietic stem cells. A portion of these marked freshly isolated spoc cells, injected into the tail vein of a mouse with an acute myocardial infarct populates the infarct in 2 weeks time; by 3 months they differentiate into cardiac myocytes in the region of the infarct. Spoc cells can be used to isolate orthologue human cells that may be useful in treating chronic and acute heart failure. These cells may also be used to produce cell lines from transgenic animals with targeted genes that are important to cardiac function. Such cell lines will be useful in high throughput pharmaceutical screening projects.

Capability Statements: A Selection Committee will use the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help its deliberations. It is the intention of the NHLBI that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following criteria:

(1) The ability to collaborate with NHLBI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to on-going research and development.

(2) Expertise and experience in the following area: genomics/proteomics and analysis; animal models of heart disease; high throughput drug screening. Prospective collaborators need only be interested in pursuing a focused aspect of the potential applications.

(3) The demonstration of adequate resources to perform the research, development and commercialization of this technology (*e.g.,* facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

(4) The willingness to cooperate with the NHLBI in the timely publication of research results and to accept the legal provisions and language of the CRADA with only minor modifications, if any.

Dated: July 24, 2003.

Lili Portilla,

Director, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute.

Dated: August 4, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–20561 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Microscopy Imaging System, Filter, and Method for Controlling the Illuminating Light Path of a Fluorescence Microscope

Bechara Kachar (NIDCD)

U.S. Provisional Application Serial No. 60/463,318 filed 17 Apr 2003 (DHHS Reference No. E–172–2003/0–US–01)

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

The invention relates to an imaging system comprising a fluorescence microscope and an annular filter. The microscope has an associated light source for providing an illuminated light path to an objective of the microscope for illuminating a specimen positioned on the microscope stage. The annular filter is positioned at a back focal plane of the illuminating light path such that only hollow cone of steep angled excitation light is delivered to the specimen and excluding low angle and axial light rays from entering the objective. Excitation illumination of the specimen occurs only in a limited region of the specimen corresponding to the focal volume where the light rays of the hollow cone of illumination converge. This modified configuration of the microscope and aperture increases signal to noise ratio of the resulting fluorescent image by reducing out of focus light (*i.e.*, scattered light). Photo-damage and photo-bleaching are also minimized.

Diffusion Tensor and q-Space MRI Specimen Characterization

Peter Basser (NICHD), Yaniv Assaf
DHHS Reference No. E–079–2003/0–US–01 filed 08 Jul 2003
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

This new in vivo magnetic resonance imaging (MRI) method, especially suited for the characterization of brain white matter, combines q-space and diffusion tensor imaging concepts: Diffusion within axons is modeled as hindered diffusion parallel to an axis of the axon and restricted diffusion perpendicular to the axis. Diffusion exterior to axons is modeled as hindered diffusion with differing diffusivities parallel and perpendicular to the nerve axis. Diffusion weighted magnetic resonance images are obtained from specimens at different q values (magnitude and direction). Parameters associated with tissue microstructure are then extracted, such as the intra and extra-axonal principal diffusivities and their corresponding principal directions, and the volume fractions of intra and extra-axonal space. Improved angular resolution of fiber tracts orientation can be obtained for tractography studies, and more microstructural information can be gleaned both diagnostic and therapeutic purposes than from conventional diffusion tensor MRI.

Method and System for Developing and Querying a Sequence Driven Contextual Knowledge Base

Michael Waters, James Selkirk, and Raymond Tennant (NIEHS)
U.S. Patent Application Serial No. 10/452,384 filed 03 Jun 2003 (DHHS Reference No. E–026–2003/0–US–01)
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

Available for licensing is a system of predictiive toxicology and pharmacology in the form of a multigenome/multispecies knowledge base incorporating gene and amino acid sequences, molecular expression data, gene/protein functional annotation, domain specific ontologies, and/or literature mapping. The present invention integrates large volumes of disparate information, such as genomic, proteomic, and/or toxicological knowledge in a framework that serves as a continually changing heuristic engine for predictive toxicology. The invention allows characterization of the effects of, for example, chemicals or stressors across species as a function of dose, time, and phenotype severity.

This research is described, in part, in Waters *et al.*, Environ. Health Perspect. 111 (1T): 15–18 (January 2003), and republished in Environ. Health Perspect. Toxicogenomics 111 (6): 811–824 (May 2003).

Pattern Recognition of Whole Cell Mass Spectra

Jon G. Wilkes (FDA), Alexandre Schvartsburg (NCTR)
DHHS Reference No. E–017–2003/0–US–01 filed 06 Jun 2003
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

This invention analyzes mass spectra (MALDI, SELDI) from a plurality of microorganism sources and biological agents. The invention is useful for diagnosing disease, anticipating epidemic outbreaks, monitoring food supplies for contamination, regulating bioprocessing operations, and is especially useful for detecting agents of war. The invention dramatically improves spectral analysis through deconvolution of complex spectra by collapsing multiple peaks showing different molecular mass originating from the same molecular fragment into a single peak. The differences in molecular mass are apparent differences caused by different charge states of the fragment and/or different metal ion adducts of one or more of the charge states. The deconvoluted spectrum is compared to a library of mass spectra acquired from samples of known identity to unambiguously determine the identity of one or more components of the sample undergoing analysis.

Stem Cell Culture, Monitoring and Storage System

Rea Ravin (NINDS), James Sullivan (ORS), Ronald Mckay (NINDS).
U.S. Patent Application Serial No. 10/334,565 filed 30 Dec 2002 (DHHS Reference No. E–171–2002/0–US–01)
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

Available for licensing is a closed chamber that provides an environment for long-term culture of stem cells, stems cells of central nervous system (CNS) origin, embryonic stem cells, and other cells. The chamber is designed with top and bottom mounted cover slips that permit the observation of cells in culture under an optical microscope. This chamber has the ability to control volume and pressure of liquids and gases by an inlet tube and outlet tubes at two different vertical positions. The chamber also includes a ball joint assembly that allows for the manipulation of a glass microcapillary/microelectrode to come in close contact with the developing cells. This microcapillary/microelectrode assembly can be used to either administer growth factors (*e.g.*, monitoring growth factor levels such as BMP and CNTF) and also for electrical recording from the cells.

Dated: August 4, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–20559 Filed 8–12–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications

listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies That Specifically Recognize SUMO-Conjugated Proteins

Dr. Mary Dasso (NICHD).
U.S. Provisional Application Serial No. 60/438,685 filed 08 Jan 2003 (DHHS Reference No. E–066–2002/0–US–01).
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov*

SUMO–1 is an ubiquitin-like heat shock protein that can be covalently conjugated to other proteins through an isopeptide linkage. This technology describes polyclonal antibodies that recognize SUMO–1 conjugated proteins, including conjugated RanGAP1. These antibodies could be used as a diagnostic tool to test for diseases that contain SUMO–1 mis-regulation with further development. It is also foreseen that they could be used in large-scale screening of small molecule libraries to find compounds capable of either inhibiting or enhancing the SUMO–1 conjugation pathway.

Modulators of Nuclear Hormone Receptor Activity: Novel Compounds, Diverse Applications for Infectious Diseases, Including Anthrax (*B. anthracis*)

E. M. Sternberg (NIMH), J. I. Webster (NIMH), L. H. Tonelli (NIMH), S. H. Leppla (NIAID), and M. Maoyeri (NIAID).
DHHS Reference No. E–247–2002/0–US–01 filed 18 October 2002.
Licensing Contact: Peter Soukas; 301/435–4646; *soukasp@mail.nih.gov.*

Technology summary and benefits: Nuclear hormones such as glucocorticoids dampen inflammatory responses, and thus provide protection to mammals against inflammatory disease and septic shock. The Anthrax lethal factor represses nuclear hormone receptor activity, and thus may contribute to the infectious agent causing even more damage to the host. This observation can be exploited to find new means of studying and interfering with the normal function of nuclear hormone receptors. Scientists at NIH have shown that under the appropriate conditions, these molecules can be used to modulate the activity of various nuclear hormone receptors. Identifying useful agents that modify these important receptors can provide relief in several human disorders such as inflammation, autoimmune disorders, arthritis, malignancies, shock and hypertension.

Long-term potential applications: This invention provides novel agents that can interfere with the action of nuclear hormone receptors. It is well known that malfunction or overdrive of these receptors can lead to a number of diseases such as enhanced inflammation; worse sequelae of infection including shock; diabetes; hypertension and steroid resistance. Hence a means of controlling or fine-tuning the activity of these receptors can be of great benefit. Current means of affecting steroid receptor activity are accompanied by undesirable side-effects. Since the conditions for which these treatments are sought tend to be chronic, there is a critical need for safer drugs that will have manageable side-effects.

Uniqueness or innovativeness of technology: The observation that the lethal factor from Anthrax has a striking effect on the activity of nuclear hormone receptors opens up new routes to controlling their activity. The means of action of this repressor is sufficiently different from known modulators of hormone receptors (*i.e.,* the classical antagonists). For instance, the repression of receptor activity is non-competitive, and does not affect hormone binding or DNA binding. Also, the efficacy of nuclear hormone receptor repression by Anthrax lethal factor is sufficiently high that the pharmacological effect of this molecule is seen at vanishingly small concentrations. Taken together, these attributes may satisfy some of the golden rules of drug development such as the uniqueness or novelty of the agent's structure, a low threshold for activity, high level of sophistication and knowledge in the field of enquiry, and the leeway to further refine the molecule by rational means.

Stage of Development: In vitro studies have been completed, and a limited number of animal studies have been carried out.

Method for the Treatment of Multiple Sclerosis

Roland Martin *et al.* (NINDS).
U.S. Provisional Application Serial No. 60/393,021 filed 28 Jun 2002 (DHHS Reference No. E–143–2002/0–US–01), PCT/US02/38290 filed 27 Nov 2002 (DHHS Reference No. E–143–2002/0–PCT–02), U.S. Patent Application filed 27 Jun 2003 (DHHS Reference No. E–143–2002/0–US–03), and PCT/US03/20428 filed 27 Jun 2003 (DHHS Reference No. E–143–2002/0–PCT–04).
Licensing Contact: Catherine Joyce 301/435–5031; e-mail: *joycec@mail.nih.gov.*

The invention relates to the discovery that humanized antibodies to the interleukin-2 receptor (IL–2R) such as (daclizumab) are effective in treating multiple sclerosis (MS). In particular, it has been discovered that patients who have failed to respond to therapy with interferon-beta show dramatic improvement when treated with daclizumab, with patients showing both a reduction in the total number of lesions and cessation of appearance of new lesions during the treatment period. Daclizumab is effective both in combination with interferon-beta and alone.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: August 4, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–20560 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Full-Length cDNA Clone Representing the Consensus Sequence of the RNA Genome of a Human Norovirus (strain MD145–12) that Encodes Biologically Active Proteins

Gael M. Belliot, Kim Y. Green, Stanislav V. Sosnovtsev (NIAID)
DHHS Reference No. E–212–2003/0
Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*

The invention provides for a full-length cloned cDNA copy of the RNA genome of a predominant norovirus strain designated MD145–12 that was associated with human gastrointestinal illness. The noroviruses, which were formerly known as ''Norwalk-like'' viruses are estimated to cause 23 million cases of acute gastroenteritis in the USA each year. The virus has been designated into category B of the CDC biodefense-related priority pathogens because it can be used as an agent of bioterrorism. The subject cDNA clone of the virus encodes proteins of the MD145–12 strain that, when expressed in vitro, exhibit properties that would be expected from those produced by the original infectious virus. This cDNA clone is presently the only source to obtain norovirus proteins to facilitate studies aimed at developing control strategies such as vaccines and therapeutic drugs.

It is our intention not to seek patent protection for the above described invention. Instead, the cDNA clone for norovirus strain MD145–12 is available for licensing via biological material license (BML).

Rapamycin Resistant T Cells and Therapeutic Uses Thereof

Drs. Daniel Fowler (NCI), Unsu Jung (NCI), Jeannie Hou (NCI), Ronald Gress (NCI), Bruce Levine (U. of Penn.), and Carl June (U. of Penn.)
U.S. Provisional Application Serial No. 60/478,736 filed 12 Jun 2003 (DHHS Reference No. E–063–2003/0–US–01)
Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*

This invention identified T cell culture conditions that use the immune suppression drug rapamycin (sirolimus) to generate rapamycin-resistant cells having Th1, Th2, Tc1 or Tc2 function (Th=T helper lymphocytes; Tc=cytotoxic T lymphocytes). This invention has demonstrated how to generate T cells enriched for Th1, Th2, Tc1 or Tc2 functions as well as how to control these functions *in vivo.* Those methods can make T cell therapies significantly more viable and applicable for treatment of a variety of diseases states, including cancer, infectious diseases, autoimmune diseases, Graft vs. Host Disease (GVHD) associated with allogeneic hematopoietic stem cell transplantation, and graft rejection. Thus, this invention has many useful purposes that could generate significant interest among groups pursuing immune therapies, particularly T cell-based therapeutic approaches. Diseases in which T cell based therapies would be of major impact include cancer, viral infections such as HIV disease, autoimmunity, transplantation and any other disease in which the T cells participate.

Computational Prediction Method for T Cell Epitopes Based on Quantitative Properties of MHC Binding Peptides

Myong-Hee Sung and Richard Simon (NCI)
U.S. Provisional Application Serial No. 60/416,034 filed 03 Oct 2002 (DHHS Reference No. E–110–2002/0–US–01)
Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov*

NIH announces a computational method for the prediction of peptides binding to major histocompatibility complex proteins (MHC), which facilitates the resource-consuming effort required to identify T-cell epitopes. The presentation of such epitopes by the MHC to T-cells can, in conjunction with co-factor interactions, activate the T-cells to initiate the necessary immune response against the epitope source. Consequently, peptides that are predicted to bind to multiple MHC molecules are potentially useful in vaccine design. The invention describes a new method for predicting MHC binding based on peptide property models constructed using biophysical parameters of the constituent amino acids and a training set of known binders. For example, the models can be applied to development of anti-tumor vaccines by scanning proteins over-expressed in cancer cells for peptides that bind to a variety of MHC molecules, as illustrated in the context of identifying candidate T-cell epitopes for melanomas and breast cancers. This computational approach provides an efficient and focused strategy for identifying candidate epitopes for development of vaccines and anti-cancer immunotherapy.

Dated: August 4, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–20562 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 discussion 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Hypovolemic Circulatory Collapse: Mechanisms and Opportunities to Improve Resuscitation Outcomes.

Date: October 2–3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301/435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20547 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 15, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787, *etaylor@niaaa.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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Halsted R01 Application.

Date: August 15, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 600 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787 *etaylor@niaaa.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20548 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, AA–2 Health Services Committee.

Date: October 9, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787, *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: October 20, 2003.

Time: 8 a.m. to 6 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: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Extramural Project Review Branch Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee AA–3 Chartered Committee Review Meeting.

Date: October 23–24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Elsie Taylor, MS, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20549 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences 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 General Medical Sciences Council.

Date: September 11–12, 2003.

Closed: September 11, 2003, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD 20892.

Open: September 11, 2003, 10:30 a.m. to 5 p.m.

Agenda: For discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the Council.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD 20892.

Closed: September 12, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, Ph.D., Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20550 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences 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 Environmental Health Sciences Council.

Date: September 15–16, 2003.

Open: September 15, 2003, 8:30 a.m. to 5:30 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: September 16, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, Ph.D., Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20555 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: September 3, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D.; Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm 2220, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: August 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20556 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ''Biodefense and Emerging Infectious Diseases''.

Date: August 26, 2003.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramaural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0695, *gjarosik@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20557 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 Board of Scientific Counselors, National Library of Medicine.

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 as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine; Board of Scientific Counselors, Lister Hill Center.

Date: September 25–26, 2003.

Open: September 25, 2003, 9 a.m. to 1 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: September 25, 2003, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Open: September 25, 2003, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Open: September 26, 2003, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor Board Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7N–705, Bethesda, MD, 301–496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20551 Filed 8–12–03; 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, R03 Grant Review.

Date: September 29, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, MD, Ph.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20552 Filed 8–12–03; 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, G13 Publications Grant Review.

Date: September 12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Merlyn M. Rodrigues, MD, Ph.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20553 Filed 8–12–03; 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, Hair Cells.

Date: August 11, 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: Daniel R. Kenshalo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

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, Synaptic Plasticity and Dendritic K+ Channels.

Date: August 12, 2003.

Time: 12 p.m. to 2 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: Daniel R. Kenshalo, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

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, Bacterial Pathogenesis & Structural Studies.

Date: August 13, 2003.

Time: 11:30 a.m. to 1 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: Robert Freund, Ph.D., 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.*

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, Papilloma Studies.

Date: August 14, 2003.

Time: 2 p.m. to 3:30 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: Robert Freund, Ph.D., 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.*

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, Genetics of Viral Immune Response.

Date: August 15, 2003.

Time: 2 p.m. to 3 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: Robert Freund, Ph.D., 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.*

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, Islet Vascularization.

Date: August 18, 2003.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

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, Retrovirus and Liver Disease.

Date: August 19, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., 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.*

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, Virology Studies.

Date: August 21, 2003.

Time: 1 p.m. to 2:30 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: Robert Freund, Ph.D., 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.*

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. 93.306, 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: August 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20554 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

List of Additional Drugs for Which Pediatric Studies Are Needed

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is providing notice of a ''List of Additional Drugs for Which Pediatric Studies Are Needed.'' This listing extends the initial list published in the **Federal Register** on January 21, 2003 (Volume 68, Number 13, pages 2789–2790). The NIH has developed the list in consultation with the Food and Drug Administration (FDA) and pediatric experts, as mandated by section 409I of the Best Pharmaceuticals for Children Act (BPCA), Public Law 107–109. This list prioritizes additional drugs most in need of study for use by children to ensure their safety and efficacy. It will be updated regularly until the Act expires on October 1, 2007.

DATES: This list is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Mattison, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 4B–100, Rockville, MD, 20892, e-mail *BestPharmaceuticals@mail.nih.gov,* telephone 301–496–5097 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The NIH is providing notice of a ''List of Additional Drugs for Which Pediatric Studies Are Needed.'' On January 4, 2002, President Bush signed into law the Best Pharmaceuticals for Children Act (BPCA). The BPCA mandates that the NIH in consultation with the FDA and experts in pediatric research shall develop, prioritize, and publish on at least an annual basis a list of approved drugs for which pediatric studies are needed. For inclusion on the list, an approved drug must meet the following criteria: (1) There is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)); or (2) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act; or (3) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act; or (4) there is a referral for inclusion on the list under section 505A(d)(4)(c); and additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population. The BPCA further stipulates that in developing and prioritizing the list, the NIH shall consider, for each drug on the list: (1) The availability of information concerning the safe and effective use of the drug in the pediatric population; (2) whether additional information is needed; (3) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and (4) whether reformulation of the drug is necessary.

In developing this addition to the initial list published on January 21, 2003, the NIH consulted with the FDA, the American Academy of Pediatrics, the United States Pharmacopoeia and other experts in pediatric research. A preliminary list of certain off-patent drugs was drafted and categorized as a function of indication and use. The drugs were then prioritized based on frequency of use in the pediatric population, severity of the condition being treated, and potential for providing a health benefit in the pediatric population.

Following are the additional drugs for which pediatric studies are most urgently needed:

Ampicillin/sulbactam.
Diazoxide.
Isoflurane.
Lindane.
Meropenem.
Metoclopramide.
Piperacillin/tazobactam.
Promethazine.

Dated: August 4, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–20558 Filed 8–12–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF–HHS–ORR–07–28–2003]

ORR Annoucement for Services to Recently Arrived Refugees

AGENCY: Office of Refugee Resettlement (ORR) Administration for Children and Families, HHS.

ACTION: Notice of an additional closing date for the ORR Standing Announcement for Services to Recently Arrived Refugees: Category One—Preferred Communities, published in the **Federal Register** on May 9, 2001 (66 FR 23705).

CFDA #: The Catalog of Federal Domestic Assistance is 93.576.

SUMMARY: The current Standing Announcement for Services to Recently Arrived Refugees posted on May 9, 2001 includes an application deadline of February 28. This notice announces an additional, one-time closing date for Category One of this standing announcement.

ELIGIBILITY: As specified in the announcement posted on May 9, 2001, eligible applicants are agencies that currently resettle refugees under a Reception and Placement Cooperative Agreement with the Department of State or with the Department of Justice.

SUMMARY: For the past two years, refugee arrival numbers have been low, and agency staff has been reduced. With the arrival of the Somali Bantu, resettlement staff will be presented with many challenges, and local services will need to be enhanced. Through this additional closing date, ORR intends to provide resources to meet the needs of the Somali Bantu.

DATES: The closing date for applications is September 12, 2003. Please note that all applications must be received (as opposed to postmarked) in ACF by this date or they will be considered late. Due

to delays in mail delivery to Federal offices, we encourage applicants to use overnight courier service to ensure prompt delivery and receipt.

ANNOUNCEMENT AVAILABILITY: This program announcement and the application materials are available from Sue Benjamin, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade, SW. 8th Floor West, Washington, DC 20447 and from the ACF Web site at: *http://www.acf.hhs.gov/programs/orr*.

FUNDING AVAILABILITY: ORR expects to award $2.5 million in discretionary social service funds for the Somali Bantu (first tier) resettlement sites.

FOR FURTHER INFORMATION CONTACT: Sue Benjamin, Office of Refugee Resettlement, telephone number (202–401–4851) or e-mail at *SBenjamin@acf.hhs.gov* or call Daphne Weeden, Grants Officer, telephone number (202–260–5980) or e-mail at *paqueries-ogm@acf.hhs.gov*.

Dated: August 8, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–20592 Filed 8–12–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Secret Service

Notice of Proposed Information Collection

ACTION: Notice of proposed information collection.

SUMMARY: The U.S. Department of Homeland Security, Office of the Chief Information Officer, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995. Currently, the U.S. Secret Service, within the U.S. Department of Homeland Security is soliciting comments concerning the SSF 3237, Contractor Personnel Access Application Form.

DATES: Interested persons are invited to submit comments on or before October 14, 2003.

ADDRESS: Direct all written comments to United States Secret Service, Recruitment and Personnel Security Division, Attn: Special Agent Norman Setser, Clearance and Access Branch, 950 H St., NW., Washington, DC 20223, Suite 3800, 202/406–5830 (*N.Setser@usss.dhs.gov*). Individuals who use a telecommunications device for the deaf (TDD) may either call the Federal Information Relay Service (FIRS) at 1–800–877–8339 or call directly (TTY) 202/406–5390.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Recruitment and Personnel Security Division, Attn: Special Agent Norman Setser, Clearance and Access Branch, 950 H St., NW., Washington, DC 20223, Suite 3800, 202/406–5979. Telephone number: 202/406–5830 (*N.Setser@usss.dhs.gov*).

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden.

The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) is the estimate of burden for this information collection accurate; (3) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Abstract: Respondents are all Secret Service contractor personnel requiring access to Secret Service controlled facilities in performance of their contractual duties. These contractors, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service controlled facilities. Responses to questions on the SSF 3237 yield information necessary for the adjudication of eligibility for facility access.

United States Secret Service

Title: Contractor Personnel Access Application.

OMB Number: 1620–0002.

Form Number: SSF 3237.

Frequency: Occasionally.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households/Business.

Estimated Number of Respondents: 5,000.

Estimated Time for Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,250 hours.

Estimated Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2003.

Adam Becker,

Chief—Policy Analysis and Records Systems Branch, U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. 03–20591 Filed 8–12–03; 8:45 am]

BILLING CODE 4810–42–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15169]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0039 (Formerly 2115–0506), 1625–0038 (Formerly 2115–0505), 1625–0066 (Formerly 2115–0595), and 1625–0012 (Formerly 2115–0042)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the four Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 12, 2003.

ADDRESSES: To make sure that your comments and related material do not

enter the docket [USCG 2003–15169] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov,* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–15169 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov*; and for inspection from the Commandant (G-CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15169], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 31723 (May 28, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15169. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Declaration of Inspection Before Transfer of Liquid Cargo in Bulk.

OMB Control Number: 1625–0039.

Type of Request: Extension of a currently approved collection.

Affected Public: Persons in charge of transfers.

Form: This collection of information does not require the public to fill out forms, but does require the completion of a Declaration of Inspection (DOI) to ensure safety during transfer of liquid cargo.

Abstract: A DOI documents the transfer of oil and hazardous materials, to help prevent spills and damage to a facility or vessel. Persons in charge of transfers must review and certify compliance with procedures specified by the terms of the DOI.

Annual Estimated Burden Hours: The estimated burden is 66,223 hours a year.

2. *Title:* Plan Approval and Records for Tank, Passenger, Cargo, and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels, Oceanographic Research Vessels, and Electrical Engineering—46 CFR Subchapters D, H, I, I-A, J, R, and U.

OMB Control Number: 1625–0038.

Type of Request: Extension of a currently approved collection.

Affected Public: Shipyards, and designers and manufacturers of certain vessels.

Form: This collection of information does not require the public to fill out

forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: This information collected requires the shipyard, or the designer or manufacturer for the construction of a vessel, to submit plans, technical information, and operating manuals to the Coast Guard.

Annual Estimated Burden Hours: The estimated burden is 8,835 hours a year.

3. *Title:* Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Requirements for Prince William Sound.

OMB Control Number: 1625–0066.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels and facilities.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written format.

Abstract: The Oil Pollution Act of 1990 (OPA 90) required the development of Vessel and Facility Response Plans to minimize the impact of oil spills. It required added measures for Prince William Sound. About the same time, the treaty known in short as MARPOL required Shipboard Oil Pollution Emergency Plans of other vessels to minimize impacts of oil spills.

Annual Estimated Burden Hours: The estimated burden is 137,199 hours a year.

4. *Title:* Certificate of Discharge to Merchant Mariners

OMB Control Number: 1625–0012.

Type of Request: Extension of a currently approved collection.

Affected Public: Masters or mates of shipping companies and merchant mariners.

Form: CG–718A.

Abstract: The information collected requires a master or mate of a shipping company to submit information on merchant mariners to the Coast Guard that: (1) Establishes their sea-service time; (2) sets forth their qualifications for their original, or for upgrading their existing, merchant-mariner credentials; and (3) sets forth their qualifications for retirement or insurance benefits.

Annual Estimated Burden Hours: The estimated burden is 4,500 hours a year.

Dated: August 6, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–20650 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–18–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15875]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Wednesday, September 10, 2003, from 8 a.m. to 2 p.m. The working groups will meet on the previous day, Tuesday, September 9, 2003, from 9 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before September 3, 2003. Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard on or before August 27, 2003.

ADDRESSES: TSAC will meet in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The working groups will first meet in the same room and then, if necessary, move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, G–MSO–1, Room 1210, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2003–15875.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, or Petty Officer Bryan Wick, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Committee Meeting

The agenda tentatively includes the following items:

(1) Status Report of the Crew Alertness Working Group.

(2) Status Report of the Towing Vessel Regulatory Review Working Group.

(3) Status Report of the Maritime Security Working Group.

(4) Status Report of the Commercial/Recreational Boating Interface Working Group.

(5) Presentation on the Final Rule for Licensing and Manning for Officers of Towing Vessels.

(6) Presentation on the Interim Rule for Fire-Suppression Systems and Voyage Planning for Towing Vessels.

(7) Presentation on the Towing Vessel Safety Program, SOLAS and MARPOL Amendments, and Several Navigation and Vessel Inspection Circular (NVIC) Updates.

(8) Presentation on mariner deaths during nighttime barge fleeting operations.

(9) Presentation on current analysis capability within MISLE.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than September 3, 2003. Written material for distribution at a meeting should reach the Coast Guard no later than September 3, 2003. If you would like a copy of your material distributed to each member of the committee or working groups in advance of a meeting, please submit 20 copies to the Assistant Executive Director no later than August 27, 2003. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than September 3, 2003.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 7, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–20651 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD05–03–003]

Navigable Waters and Jurisdiction; Lake Fontana, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of navigability determination.

SUMMARY: The Coast Guard previously solicited comments regarding a proposed change to the agency navigability status of Lake Fontana, an impoundment of the Little Tennessee River, wholly located in western North Carolina. Based on the comments received, the Coast Guard has confirmed the original navigability determination of Lake Fontana had an adequate factual basis. For purposes of Coast Guard jurisdiction Lake Fontana will remain navigable.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christine N. Cutter, Legal Advisor, Fifth Coast Guard District, at telephone number (757) 398–6291.

SUPPLEMENTARY INFORMATION: On February 19, 2003, we provided public notice and requested comments on the Coast Guard's intention to change the navigability status of Lake Fontana, NC, that has been in effect since 1954 (68 FR 8069). In response to that notice published in the **Federal Register** we received six comments on the proposed change.

Discussion of Comments

The Swain County Chamber of Commerce and the Swain County Economic Development Commission provided comments that supported the proposed change for economic development reasons. One comment from a private individual questioned the necessity of the proposed change to the navigability determination citing a proposed rulemaking from the Coast Guard that would define ''waters subject to the jurisdiction of the United States'' as waters located on lands for which the United States has acquired title or controls. The authority cited 40 U.S.C. 255 (recently re-codified at 40 U.S.C.S. 3111 and 3112) does not apply to the present situation. The North Carolina Wildlife Resources Commission, the Tennessee Valley Authority and the Department of the Army, Wilmington District, Corps of Engineers all submitted comments which opposed the change in navigability status based on evidence that the Little Tennessee River was used as a highway in substantial interstate commerce with historic logging operations. The Department of the Army, Wilmington District, Corps of Engineers considers the Little Tennessee River to be navigable from it mouth to Mile 114.7 in Franklin, North Carolina based on a 1985 navigability study and report which was provided to the Coast Guard for review. The report provides documentary evidence of substantial interstate commerce to include the waters of Lake Fontana.

Navigability Determination Remains Unchanged

Based on the comments and supporting documentation received the Coast Guard has concluded that reliable evidence supports the original navigability determination of the Little Tennessee River. Therefore, the Coast Guard will not change its navigability determination of Lake Fontana and it will remain navigable for purposes of Coast Guard jurisdiction.

The Coast Guard's administrative determination regarding a body of waters navigability status is solely for the purpose of administering and enforcing applicable laws and Coast Guard regulations.

Dated: July 31, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–20649 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–56]

Notice of Submission of Proposed Information Collection to OMB: Advance of Escrow Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is requesting renewal of the approval to require mortgagors/borrowers and mortgages/lenders execute Building Loan Agreements setting forth terms and conditions under which progress payments may be advanced during project construction. These agreements are to be executed before initial endorsement of the mortgage to insurance.

DATES: *Comments Due Date:* September 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0018) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Advance of Escrow Funds.

OMB Approval Number: 2502–0018.

Form Numbers: HUD–92464.

Description of the Need for the Information and its Proposed Use: The Department is requesting renewal of the approval to require mortgagors/borrowers and mortgages/lenders to execute Building Loan Agreements

setting forth terms and conditions under which progress payments may be advanced during project construction. These agreements are to be executed before initial endorsement of the mortgage to insurance.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
525	525		2		1,050

Total Estimated Burden Hours: 1,050.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 7, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–20678 Filed 8–12–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–57]

Notice of Submission of Proposed Information Collection to OMB: Manufactured Home Construction and Safety Standards Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is requesting an extension of the currently approved information collection. The Department is soliciting public comments on the subject proposal.

The National manufactured Home Construction and Safety Standards Act authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses this information to calculate and collect monitoring inspection fees for manufactured housing.

DATES: *Comments Due Date:* September 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0233) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; E-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Manufactured Home Construction and Safety Standards Program.

OMB Approval Number: 2502–0233.

Form Numbers: HUD–101, HUD–203, HUD–203B, HUD–301, HUD–302, HUD–303, HUD–304.

Description of the Need for the Information and its Proposed Use: The National Manufactured Home Construction and Safety Standards Act authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses this information to calculate and collect monitoring inspection fees for manufactured housing.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting Burden	256	7,536		0.5		3,768

Total Estimated Burden Hours: 3,768.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 7, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–20679 Filed 8–12–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Arapaho National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for the Arapaho National Wildlife Refuge. We prepared this CCP pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and in it we describe how the Service intends to manage Arapaho National Wildlife Refuge over the next 15 years.

DATES: If you wish to provide written comments (in hard copy or electronic format), send them to Ann Timberman, Refuge Manager or to Bernardo Garza, Planning Team Leader, to the postal or electronic mail addresses listed below. Please keep in mind that we must receive your comments on or before September 12, 2003.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA please write to Ann Timberman, Refuge Manager, Arapaho NWR, at P.O. Box 457, 953 Jackson County Road #32, Walden, Colorado 80480–0457, or via electronic mail at *Ann_Timberman@fws.gov.* You may also provide comments or obtain a copy of the Draft CCP/EA from Bernardo Garza, Planning Team Leader, U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 or via electronic mail at *Bernardo_Garza@fws.gov.* Additionally, copies of the CCP/EA may be downloaded at the following website address: *http://mountain-prairie.fws.gov/planning/.* The Service encourages you to attend and provide your comments at the public meetings to be held in Walden and Fort Collins and/or Denver during September 2003. For precise information on the location, date and time of the meetings please contact Arapaho NWR at (970) 723–8202.

FOR FURTHER INFORMATION CONTACT: Ann Timberman, (970) 723–8202 ext. 3 or Bernardo Garza, (303) 236–4377.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Arapaho NWR, located in the center of Jackson County (north-central Colorado) is 23,243 acres in size. The Colorado Wildlife Commission approved the establishment of Arapaho NWR on June 5, 1967; the Migratory Bird Conservation Commission approved acquisition of lands for the Refuge on August 15, 1967, and Arapaho NWR was established on September 26, 1967.

Significant issues addressed in this Draft CCP/EA include: Refuge establishment and history (Refuge purposes, water rights, and land acquisition); public uses (hunting, fishing, wildlife observation and photography, environmental education and interpretation, and other wildlife-compatible public uses); habitat management (diversification, restoration, grazing, prescribed fire, water management, weed control); wildlife and fisheries management (large ungulate herbivory, hunting and fishing pressure, habitat restoration and protection); species of concern (protection, research); partnerships and stakeholder involvement (importance, purposes); and Refuge management (staffing, equipment, infrastructure, and budgetary needs).

The Service developed four alternatives for management of the Refuge (Alternatives A, B, C & D), with the preferred alternative (Alternative D) consisting of elements of the first three alternatives. The preferred alternative seeks to ensure that wildlife comes first in Arapaho NWR by restoring, diversifying, and intensively managing the four distinct habitat types that comprise the Refuge (wetlands, wet meadows, riparian corridors, and uplands). This intensive management of habitats is expected to provide a wide variety of habitat elements that will in turn sustain a richer variety of flora and fauna through their life cycles. This proposed management will benefit not only waterfowl, but also shorebirds, neotropical migratory and upland birds, fishery resources, reptiles, amphibians, insects, and mammalian species. The preferred alternative also calls for intensive efforts to forge partnerships to attain Refuge goals as well as to promote wildlife-dependent public uses at the Refuge and throughout the North Park region of Colorado. The six priority wildlife-dependent public uses will continue to be supported and in some cases they will be expanded throughout the Refuge under the preferred alternative. This alternative will also strengthen the close working relationship in existence between the Service, the local community, conservation organizations, the Colorado Division of Wildlife, and other State and Federal agencies. The preferred alternative is also expected to increase the amount of visitation of wildlife enthusiasts and wildlife-dependent recreationists to North Park, thus supporting the local economy while preserving wildlife resources for future generations.

The Service is seeking your comments regarding this draft CCP/EA that outlines the way in which Arapaho NWR will be managed for the next 15 years. Please provide us with your comments on or before September 12, 2003. Send your comments to Ann Timberman, Refuge Manager, or to Bernardo Garza, Planning Team Leader, to the addresses listed above.

Dated: July 25, 2003.

John A. Blankenship,

Deputy Regional Director, U.S. Fish and Wildlife Service, Lakewood, Colorado.

[FR Doc. 03–20570 Filed 8–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; G 03–0257]

Meeting Notice

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting notice for the National Historic Oregon Trail Interpretive Center (NHOTIC) advisory board.

SUMMARY: The National Historic Oregon Trail Interpretive Center Advisory Board will meet in a conference room at the Best Western Sunridge Inn (541–523–6444), One Sunridge Way in Baker City, OR from 8 a.m. to 12 p.m., Pacific Time (PT) on Monday, September 29, 2003.

The meeting topics include revising the strategic plan, a roundtable to allow members to introduce new issues to the board, and other matters as may reasonably come before the Board. The entire meeting is open to the public. For a copy of the information to be distributed to the Board members, please submit a written request to the Vale District Office 10 days prior to the meeting. Public comment is scheduled for 10:15 a.m. to 10:30 a.m., Pacific Time (PT).

FOR FURTHER INFORMATION CONTACT: Additional information concerning the NHOTIC Advisory Board may be obtained from Peggy Diegan, Management Assistant/Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918, (541) 473–3144, or e-mail *Peggy_Diegan@or.blm.gov*.

Dated: August 7, 2003.

David R. Henderson,

District Manager.

[FR Doc. 03–20571 Filed 8–12–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 19, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 28, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

FLORIDA

Alachua County

Liberty Hill Schoolhouse, (Florida's Historic Black Public Schools MPS) 7600 NW 23rd Ave., Gainesville, 03000825

Pinellas County

Round Lake Historic District, Roughly 5th Ave. N, 9th St. N, 13th Ave. N, and 4th St. N, St. Petersburg, 03000824

IOWA

Allamakee County

Allamakee County Court House, (PWA-Era County Courthouses of IA MPS) 110 Allamakee St., Waukon, 03000827

Appanoose County

C B & Q Passenger Depot, (Central City, Iowa MPS) 1124 S. Eighteenth St., Centerville, 03000833

Audubon County

Audobon County Court House, (PWA-Era County Courthouses of IA MPS) 318 Leroy St., Audubon, 03000826

Bremer County

Bremer County Court House, (PWA-Era County Courthouses of IA MPS) 415 E. Bremer Ave., Waverly, 03000821

Chicago, Burlington, and Quincy Freight House—Chariton, Jct. of Auburn and Brookdale, Chariton, 03000836

Buchanan County

Buchanan County Court House, (PWA-Era County Courthouses of IA MPS) 216 5th Ave., 216 5th Ave., 03000820

Cass County

Cass County Court House, (PWA-Era County Courthouses of IA MPS) 5 W. 7th St., Atlantic, 03000819

Des Moines County

Des Moines County Court House, (PWA-Era County Courthouses of IA MPS) 513 N. Main St., Burlington, 03000817

Melcher, Dennis, Pottery and House, 22981 and 22982 Agency Rd., Danville, 03000832

Floyd County

Floyd County Court House, (PWA-Era County Courthouses of IA MPS) 101 S. Main St., Charles City, 03000816

Franklin County

Hampton Double Square Historic District, Roughly bounded by 2nd Ave., 1st Ave., the alley W of 1st St. and alley E of Federal, Hampton, 03000834

Henry County

Bangs, John and Lavina, House, 2759 Old Highway 24, New London, 03000831

McClellan's General Store, 107 E. Main, New London, 03000828

Smith and Weller Building, 100 E. Main, New London, 03000830

Humboldt County

Humboldt County Court House, (PWA-Era County Courthouses of IA MPS) 203 Main St., Dakota City, 03000823

Jones County

Jones County Court House, (PWA-Era County Courthouses of IA MPS) 500 W. Main St., Anamosa, 03000822

Marion County

Porter-Rhynsburger House, 514 Broadway St., Pella, 03000837

Van Den Berg, Hendrik J. and Wilhelmina H., Cottage, 1305 W. Washington St., Pella, 03000835

Warren County

Warren County Court House, (PWA-Era County Courthouses of IA MPS) 115 N. Howard Ave., Indianola, 03000818

KANSAS

Atchison County

Baker, Francis and Harriet, House, 823 N. 5th St., Atchison, 03000838

Cherokee County

Baxter Springs Independent Oil and Gas Service Station, (Route 66 in Kansas MPS) 940 Military Ave., Baxter Springs, 03000841

Kansas Route 66 Historic District—East Galena, (Route 66 in Kansas MPS) US 66, Galena, 03000842

Williams' Store, (Route 66 in Kansas MPS) 7109 SE Highway 66, Riverton, 03000843

Cowley County

Coffin, W.H., House, 421 E. 11th Ave, Winfield, 03000839

Sherman County

Ruleton School, 6450 Ruleton Ave., Goodland, 03000840

MASSACHUSETTS

Bristol County

Whitman Mills, 1, 90 and E side Riverside Ave., S side, N side and rear 1 Coffin Ave., 10 Manomet St., New Beford, 03000844

NEW YORK

Chenango County

Methodist-Episcopal Church of Norwich, 74 N. Broad St., Norwich, 03000846

Delaware County

Roxbury Historic District, NY 30, Cty Rte. 41, Bridge St., Vega Mt. Rd., Lake St., Shepard Hill Rd., Roxbury, 03000852

New York County

Bank of New York Building, 48 Wall St., New York, 03000847
Harlem Savings Bank, 124 E. 125th St., New York, 03000849
Two Bridges Historic District, Roughly bounded by E. Broadway, Market St., Cherry St., Catherine St., Madison St., and St. James Place, New York, 03000845
Wallace Building,
56–58 Pine St., New York, 03000848

Queens County

Public School 66,
85–11 102nd St., Richmond Hill, 03000850

NORTH CAROLINA

Greene County

Snow Hill Colored High School, 602A W. Harper St., Snow Hill, 03000853

Haywood County

Frog Level Historic District, Roughly bounded by Commerce and Boundary Sts., Water St. and Richland Creek, Depot St., and 80 Commerce St., Waynesville, 03000854

Mitchell County

Downtown Spruce Pine Historic District, Roughly bounded by Oak Ave., Locust St., Topaz St., and NC 226, Spruce Pines, 03000855

New Hanover County

Babies Hospital, 7225 Wrightsville Ave., Wilmington, 03000856

Northampton County

Amis-Bragg House, 203 Thomas Bragg Dr., Jackson, 03000857

Orange County

Bellevue Manufacturing Company, Nash St. and Eno St., Hillsborough, 03000858

OHIO

Cuyahoga County

Henninger, Phillip, House, 5757 Broadview Rd., Parma, 03000859

WASHINGTON

Spokane County

East Downtown Historic District, (Single Room Occupancy Hotels in Central Business District of Spokane MPS) Roughly bounded by Main Ave., Second Ave., Division St., and Post St., Spokane, 03000860

Stevens County

Clayton School, (Rural Public Schools of Washington State MPS) Corner of Parke Ave. and Swenson Rd., Clayton, 03000862

Whatcom County

Hotel Laube, (Commercial Buildings of the Central Business District of Bellingham, Washington MPS) 1226 N. State St., Bellingham, 03000851
Richards, T.G., and Company Store, 1308 E St., Bellingham, 03000861

[FR Doc. 03–20532 Filed 8–12–03; 8:45 am]

BILLING CODE 4212–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 26, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 28, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Mississippi County

Hale Avenue Historic District (Boundary Increase), (Osceola MRA) Roughly 107–111 W. Hale Ave. and 101–109 N. Walnut St., Osceola, 03000863

MARYLAND

Prince George's County

Oxon Cove Park, Government Farm Rd., Oxon Hill, 03000869

MISSOURI

Greene County

Jefferson Street Footbridge, Jefferson Ave., bet. Commercial and Chase Sts., Springfield, 03000865
Marx-Hurlburt Building, (Springfield, Missouri MPS AD II) 311–315 E. Park Central Sq., Springfield, 03000864
St. John's Mercy Hospital Building, 620 W. Scott, Springfield, 03000867

Jackson County

Guadalupe Center, 1015 Avenida de Cesar Chavez, Kansas City, 03000866

NEW JERSEY

Somerset County

Kennedy-Martin-Stelle Farmstead, 450 King George Rd., Bernards Township (Basking Ridge), 03000868

NEW MEXICO

Grant County

Silver City Woman's Club, (New Mexico Federation of Women's Club Buildings in New Mexico MPS) 411 Silver Heights Blvd., Silver City, 03000886

NORTH DAKOTA

Barnes County

Midland Continental Railroad Depot, 401 Railway St., Wimbledon, 03000870

Ramsey County

Central High School, 325 Seventh St., Devils Lake, 03000871

OKLAHOMA

Caddo County

Randlett Park, Washita R. S to Central Blvd. and E to 7th St., Anadarko, 03000878

Carter County

Dornick Hills Country Club, 519 N. Country Club Rd., Ardmore, 03000877

Mayes County

Pensacola Dam, OK 28 over Grand R, 0.5 mi. E of jct. with OK 82, Langley, 03000883

McClain County

US Highway 77 Bridge at Canadian River, US 77 over the Canadian R, Purcell, 03000882

Noble County

Perry Courthouse Square Historic District, Roughly bounded by Birch, Elm, Sixth and Seventh, Perry, 03000881

Oklahoma County

Citizens State Bank, 1112 Northwest 23rd, Oklahoma City, 03000875

Pawnee County

Pawnee Municipal Swimming Pool and Bathhouse, 1.1 mi. N, 0.35 E of Jct. OK 18 and US 64, Pawnee, 03000873

Rogers County

Verdigris Club Lodge, OK 2, Catoosa, 03000876

Seminole County

Strother Memorial Chapel, 1201 Van Dr., Seminole, 03000880

Tulsa County

Boulder-on-the-Park, 1850 S. Boulder Ave., Tulsa, 03000872
Cain's Dancing Academy, 423 N. Main, Tulsa, 03000874
Tulsa Fire Alarm Building, 1010 E 8th St., Tulsa, 03000879

PENNSYLVANIA

Allegheny County

Kerr, Thomas R., Dr., House and Office, 438 Fourth St., Oakmont, 03000885

PUERTO RICO

Las Piedras Municipality

Cueva del Indio (Prehistoric Rock Art of Puerto Rico MPS), Approx. 1.2 km N of PR 198, Las Piedra City, 03000884

SOUTH CAROLINA

Richland County

Old Shandon Historic District, Roughly bounded by Cypress, Lee, Maple, Preston and Woodrow St., Columbia, 03000887

SOUTH DAKOTA

Hughes County

Little Cherry Archeological Site, Address Restricted, Pierre, 03000890

Lyman County

Iron Nation Archeological Site, Address Restricted, Lower Brule, 03000891

Stanley County

Buffalo Calf Archeological Site, Address Restricted, Fort Pierre, 03000888
Cattle Oiler Archeological Site, Address Restricted, Fort Pierre, 03000889

VERMONT

Orange County

Aloha Camp (Organized Summer Camping in Vermont MPS), 2039 Lake Morey Rd., Fairlee, 03000892
Aloha Hive Camp (Organized Summer Camping in Vermont MPS), 846 VT 244, West Fairlee, 03000893
Camp Wyoda (Organized Summer Camping in Vermont MPS), 43 Middlebrook Rd., West Fairlee, 03000895
Lanakila Camp (Organized Summer Camping in Vermont MPS), 2899 Lake Morey Rd., Fairlee, 03000894

WISCONSIN

Eau Claire County

Owen Park Bandshell, First Ave., Owen Park, Eau Claire, 03000896

Winnebago County

Jersild, Rev. Jens N., House, 331 E. Wisconsin Ave., Neenah, 03000898
Lindsley, Perry, House, 1102 E. Forest Ave., Neenah, 03000899
Sensenbrenner, J. Leslie, House, 256 N. Park Ave., Nennah, 03000897

[FR Doc. 03–20533 Filed 8–12–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Battle Creek Salmon and Steelhead Restoration Project, Tehama and Shasta Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change to public hearing date for the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation), the lead Federal agency; the Federal Energy Regulatory Commission, a cooperating Federal agency and the State Water Resources Control Board (SWRCB), the State lead agency, are changing the public hearing date for the Draft EIS/EIR from August 12, 2003, to August 27, 2003. The notice of availability of the Draft EIS/EIR and notice of public workshop and notice of public hearing was published in the **Federal Register** on July 18, 2003 (68 FR 42758–42759).

DATES: The public hearing for the Draft EIS/EIR will be held on August 27, 2003, from 6 p.m. to 8:30 p.m. at the address below.

ADDRESSES: The public hearing will be held at the Manton Grange, 31557 Forward Road, Manton, California.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Marshall, Reclamation, at 916–978–5248, TDD 916–978–5608, e-mail: *mmarshall@mp.usbr.gov* or Mr. Jim Canaday, SWRCB, at 916–341–5308, e-mail: *jcanaday@waterrights.swrcb.ca.gov.*

Dated: August 6, 2003.

Kenneth Lentz,

Chief, Scientific Support Branch, Mid-Pacific Region.

[FR Doc. 03–20572 Filed 8–12–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree, Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Under 28 CFR 50.7, notice is hereby given that on July 31, 2003, a proposed consent decree in *United States* v. *Acorn Engineering Company, et al.*, Civil Action No. 03–5470–WJR (FMOx), was lodged with the United States District Court for the Central District of California.

The United States' claims in this action arise under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California, that may present an imminent and substantial endangerment to public health or welfare or the environment.

The consent decree resolves settling defendants' liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in the Environmental Protection Agency's 1998 Interim Record of Decision.

The Department of Justice will receive for a period of third (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Acorn Engineering Company, et al.*, D.J. Ref. 90–11–2–354/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The consent decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California, and at U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, California. During the public comment period the consent decree also may be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. 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 from the Consent Decree Library, please enclose a check in the amount of $14.25 (57 pages @ 25 cents per page reproduction cost), payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20669 Filed 8–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Consent Decree Addendum Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Second Addendum to Consent Decree in *United States* v. *Motiva Enterprises LLC,* Civil Action No. H–01–0978, which was lodged with the United States District Court for the Southern District of Texas on August 4, 2003.

The original settlement, covering nine refineries, was lodged with the Court on March 21, 2001 and entered on August 21, 2001, as part of EPA's Petroleum Refinery Initiative. The proposed Addendum modifies the schedule for the installation of pollution control

equipment and imposes more stringent emission limits on several processing units at the Delaware City refinery.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Addendum to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Motiva Enterprises LLC., D.J. Ref. 90–5–2–1–07209.*

The proposed Addendum may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period the Second Addendum to Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Second Addendum to Consent Decree, may also be obtained by mail from the Consent Decree Library, P.O. 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 from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20668 Filed 8–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Water Act

In accordance with 29 CFR 50.7, notice is hereby given that on July 25, 2003, a proposed Amended Consent Decree in *United States* v. *Southern Ohio Coal Company*, (''SOCCO''), Case No. C2–96–0097 (GCS), was lodged with the United States District Court for the Southern District of Ohio, Eastern Division.

In this action the United States asserted claims against the owners and operators of a coal mine in Meigs County, Ohio, for injunctive relief, civil penalties, and recovery for damages to natural resources under the trusteeship of the United States. This action was brought pursuant to Sections 309(b) and 311(d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the ''CWA''), 33 U.S.C. 1319(b) and (d), and under Section 521(c) of the Surface Mining Control and Reclamation Act (''SMCRA''), 30 U.S.C. 1271(c).

A Consent Decree entered in 1996 obtained from SOCCO significant injunctive relief, compensation for damage to natural resources, reimbursement of certain costs incurred by the United States in assessing damages to natural resources, and a civil penalty. The Ohio Environmental Protection Agency (''OEPA'') participated in settlement discussions and issued parallel orders designed to complement the agreements reflected in the 1996 Consent Decree. In response to matters beyond SOCCO's control and with the agreement of OEPA, the United States has agreed to amend the performance requirements of the 1996 Consent Decree. Under this Amended Consent Decree SOCCO would: (1) Pay additional sums for natural resource restoration activities; (2) pay for two studies of direct interest to OEPA; and (3) grant a conservation easement to land owned by SOCCO adjacent to the streams.

The Department of Justice will receive comments relating to the Gopher State Amended Consent Decree for a period of fifteen (15) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Southern Ohio Coal Company,* D.J. Ref. 90–5–1–1–5033.

The Amended Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 303 Marconi Blvd., Suite 200, Columbus, OH 43215 and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. 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 from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20671 Filed 8–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on July 29, 2003, a proposed consent decree in *United States* v. *Western States Contracting, Inc.*, No. CV–S–03–0896 PMP LRL, was lodged with the United States District Court for the District of Nevada.

The Consent Decree resolves claims brought in a Complaint filed concurrently with the lodging of the Consent Decree. The Complaint alleges that defendant Western States Contracting, Inc. failed to comply with Clean Air Act requirements to control fugitive dust at construction projects in Clark County, Nevada.

Under the proposed Consent Decree, Western States will pay a $40,000 civil penalty. In addition, Western States will commit to injunctive relief requiring that it implement necessary work practices to control dust emissions in the future and provide training in such practices to its employees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Western States Contracting, Inc.*, D.J. Ref. No. 90–5–2–1–06992.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, and at the Office of the United States Attorney, District of Nevada, 333 Las Vegas Blvd. So., #5000, Las Vegas, Nevada 89101 (refer to USAO No.: 2000V00330). During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044–7611, or by e-mailing or faxing 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 enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20670 Filed 8–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 6, 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 Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: New collection.

Title: Revising Quarterly Contribution and Wage Reports to Accommodate Expanded Name Fields and Additional Labor Market Information.

OMB Number: 1205–0NEW.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: 1-time.

Information collection	Number of respondents /responses	Average response time	Annual burden hours
Short employer survey	748	0.25	187
Case study interview	20	1.5	30
Payroll company interviews	3	1.5	5
Total	771	.....	222

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/ maintaining systems or purchasing services): $0.

Description: The information collected with this survey is necessary to assess the burden employers would experience if the quarterly contribution and wage reports filed by employers were revised to accommodate full names and additional labor market information (LMI). The full name fields are necessary to enhance the efficiency of the National Directory of New Hires database in locating the employment of individuals who are not meeting their parental responsibilities. The additional LMI data is needed to improve the ability to accurately assess the value of various Workforce Investment Act vocational training programs and to enrich the pool of LMI data available.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–20580 Filed 8–12–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 1, 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 Vanessa Reeves on 202–693–4124 (this is not a toll-free number) or e-mail: *reeves.vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), 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: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Consumer Price Index (CPI) Housing Survey (CADC).

OMB Number: 1220–0163.

Affected Public: Business or other for-profit and Individuals or households.

Frequency: Semi-annually and On occasion.

Type of Response: Reporting.

Number of Respondents: 36,996.

Number of Annual Responses: 62,942.

Estimated Time Per Responses: 6 minutes for Screening Survey; 9 minutes for Initiation Survey; and 7 minutes for Pricing Survey.

Total Burden Hours: 6,581.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This request is for a three-year revision of the collection of housing information based on Census Bureau data. The data (rents, and other housing costs) are used to construct the items of Rent and Owners' Equivalent Rent. Together, these items comprise over 27 percent of the Consumer Price Index. Respondents include some owners and/or managers of rental properties throughout the country.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–20581 Filed 8–12–03; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Pharmacy Billing Requirements. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 14, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, FAX (202) 693–1451, e-mail *Bell.Hazel@dol.gov*. Please use only one method of transmission for comments (mail, FAX, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injuries and/or illnesses, medical benefits in the form of prescription drugs dispensed by pharmacies for treatment of the compensable injury or illness. To determine whether bills submitted by pharmacies for medicinal drugs, equipment and supplies are appropriate, the FECA, BLBA, and EEOICPA programs require that the providers billing the government supply certain information. The majority of pharmacy bills submitted to OWCP are now submitted electronically using one of the industry-wide standard formats for the electronic transmission of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). This recent development has led OWCP to drop Form 79–1A as the required paper billing format for this information collection. However, since some pharmacy bills are still submitted using paper-based billing formats, OWCP will continue to accept the paper-based bills as long as they contain the required data elements needed to process the bills. This information collection is currently approved for use through January 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for pharmaceuticals covered under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Pharmacy Billing Requirements.

OMB Number: 1215–0194.

Agency Number:

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 17,295.

Total Responses: 899,331.

Time per Response: 5 minutes.

Frequency: On Occassion.

Estimated Total Burden Hours: 76,644.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 6, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–20578 Filed 8–12–03; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the *Employment Standards Administration* is soliciting comments concerning the proposed collection: *Claim for Medical Reimbursement Form (OWCP–915).* A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 14, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, FAX (202) 693–1451, e-mail *Bell.Hazel@dol.gov.* Please use only one method of transmission for comments (mail, FAX, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts require OWCP to pay for covered medical treatment that is provided to beneficiaries, and also to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Respondents under BLBA use similar Form CM–915 (approved under OMB No. 1215–0052) to seek reimbursement for out-of-pocket medical expenses they have paid, while respondents under the EEOICPA use Form EE–915 (approved under OMB No. 1215–0197). OWCP is now seeking an extension of the approval for this collection of information for respondents under the BLBA and EEOICPA using a new form (Form OWCP–915) for all three programs. Clearance of the OWCP–915 for use by beneficiaries from all three programs is a vital step in the unification of OWCP's separate medical bill processing systems under one contractor. The OWCP–915 provides a standardized format for the beneficiary to bill OWCP for recovery of fees paid in connection with their treatment. This information collection is currently approved for use through January 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for certain covered medical services to injured employees who are covered under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Medical Reimbursement Form.

OMB Number: 1215–0193.

Agency Number: OWCP–915.

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 33,727.

Total Responses: 134,908.

Time per Response: 10 minutes.

Frequency: Quarterly.

Estimated Total Burden Hours: 22,394.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $148,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 6, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–20579 Filed 8–12–03; 8:45 am]

BILLING CODE 4510–CR–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2003–2 CARP CD 2001]

Ascertainment of Controversy for the 2001 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for calendar year 2001 under the cable statutory license to submit comments as to whether a Phase I or Phase II controversy exists as to the distribution of those fees and a Notice of Intention to Participate in a royalty distribution proceeding.

DATES: Comments and Notices of Intention to Participate are due on September 12, 2003.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney,

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year cable systems submit royalties to the Copyright Office for the retransmission to their subscribers of over-the-air television and radio broadcast signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the distribution of the royalty fees that remain in controversy. *See* 17 U.S.C. chapter 8.

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims for which a controversy exists under his authority set forth in section 111(d)(4) of the Copyright Act, title 17 of the United States Code. See *e.g.* Orders, Docket No. 2002–8 CARP CD 2000 (dated December 4, 2002), Docket No. 2001–6 CARP CD 99 (dated October 17, 2001), Docket No. 2000–6 CARP CD 98 (dated October 12, 2000) and Docket No. 99–5 CARP CD 97 (dated October 18, 1999). However, the Copyright Office must, prior to any distribution of the royalty fees, ascertain who the claimants are and the extent of any controversy over the distribution of the royalty fees.

The CARP rules provide that:

> In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. 37 CFR 251.45(a).

The Copyright Office may publish this notice on its own initiative, *see, e.g.*, 64 FR 23875 (May 4, 1999); in response to a motion for partial distribution from an interested party, *see, e.g.*, 67 FR 55885 (September 6, 2000), or in response to a petition requesting that the Office declare a controversy and initiate a CARP proceeding. In this case, the Office has received a motion for a partial distribution of the 2001 cable royalty fees.

On July 31, 2003, representatives of the Phase I claimant categories to which royalties have been allocated in prior cable distribution proceedings filed a motion with the Copyright Office for a partial distribution of the 2001 cable royalty fund. The Office will consider this motion after each interested party has been identified by filing the Notice of Intention to Participate requested herein and has had an opportunity to file responses to the motion.

1. Comments on the Existence of Controversies

Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, the Copyright Office is requesting comment on the existence and extent of any controversies, at Phase I and Phase II, as to the distribution of the 2001 cable royalty fees.

In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that has been retransmitted by cable systems. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, music programming, and Canadian programming. The Office seeks comments as to the existence and extent of controversies between these categories for royalty distribution.

In Phase II of a cable royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement and the extent of the controversy.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

2. Notice of Intention to Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. In a prior proceeding, the Library was forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. *See* 65 FR 54077 (September 6, 2000); *see also* Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000). These rulings will result in a future amendment to section 251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2001 cable royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, facsimile number (if any), and e-mail address (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number, facsimile number, and e-mail address, a joint Notice shall provide the full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the Notice; and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants that are parties to the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Notices of Intention to Participate must be received in the Office of the Copyright General Counsel no later than 5 p.m. on September 12, 2003.

3. Motion of Phase I Claimants for Partial Distribution

A claimant who is not a party to the motion may file a response to the motion no later than the due date set forth in this Notice, provided that the respondent files a Notice of Intention to Participate in this proceeding in accordance with this Notice.

The Motion of Phase I Claimants for Partial Distribution is posted on the

Copyright Office Web site (*http://www.copyright.gov/carp/phase1motion.pdf*) and is available for copying in the Office of the Copyright General Counsel.

Dated: August 7, 2003.

Marilyn J. Kretsinger,

Associate General Counsel.

[FR Doc. 03–20658 Filed 8–12–03; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on September 16, 2003, from 1 p.m. to 3:30 p.m., at the Hotel Lombardy in the International Room located at 2019 Pennsylvania Avenue NW., Washington, DC.

The agenda for the meeting will be the Presidential library programs and a discussion of several critical issues.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Richard L. Claypoole, (301) 837–2047.

Dated: August 6, 2003.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 03–20583 Filed 8–12–03; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 12, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant—Permit Application No. 2004–008

Patrick Shore, Department of Earth and Planetary Sciences, Washington University, One Brookings Drive, St. Louis, MO 63130.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Area

The applicant proposes to enter the Barwick Valley Antarctic Specially Protected Area (ASPA # 123) to remove seismic equipment, solar panels, and all other associated equipment. This seismic station was established in December 2001, before the boundaries of the Barwick Valley were modified to include the seismic station's location. Removal of the station will prevent further need to access the Specially Protected Area.

Location

ASPA #123—Barwick Valley, Victoria Land

Dates

November 1, 2003—December 31, 2003

2. Applicant—Permit Application No. 2004–009

Robert L. Pitman, NOAA/NMFS, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant proposes to collect up to 200 biopsy samples (tiny bits of skin—the size of a pencil eraser) from Antarctic killer whales using a crossbow or modified rifle. The samples will be studied to determine the taxonomic status of the three different morphotypes recently observed in Antarctic waters. These biopsy techniques have been used to sample thousands of whales and dolphins over the years with little or no disturbance to the animals. The applicant will take the samples from a launch or the bow of a larger ship.

Location

At sea in Antarctic waters, continent-wide

Dates

December 15, 2003 to March 31, 2005

3. Applicant—Permit Application No. 2004–010

Paul J. Ponganis, Center for Marine Biotechnology/Biomedicine, Scripps Institute of Oceanography, University of California, San Diego, La Jolla, CA 92093–0204.

Activity for Which Permit Is Requested

Take, Enter Antarctic Specially Protected Areas, and Import into the U.S.A. The applicant proposes to capture and release up to 80 adult and 20 Emperor chicks. Diving physiology studies will be conducted on birds diving at an isolated dive hole in McMurdo Sound. Blood and tissues samples will be taken to examine blood oxygen and nitrogen levels in order to understand how emperors dive so deeply, and yet avoid complications such as decompression sickness (''the bends''), hypoxemia, and shallow water blackout. In addition, antioxidant and oxygen free radical scavenging enzymes will be examined in tissue biopsy samples in order to understand the biochemical mechanisms, which may protect tissues from free radical damage during diving. Diving behavior (stroke frequency and prey capture) will be investigated at the dive hole with application of accelerometer recorders and digital cameras. Penguins will be equipped with one of a variety of microprocessor recorders (depth recorder, P_{02} recorder, ECG recorder, accelerometer, blood sampler, or digital camera). Any electrodes or catheters are implanted under general anesthesia with techniques developed on prior projects; birds dive with the recorders for 1–2 days after which the microprocessors are removed and downloaded; for the blood sampler, it is removed once a sample is taken in order to allow analyses to be performed. Tissue samples will be obtained under

general anesthesia with biopsy techniques developed on past projects.

In addition the applicant proposes to continue annual censuses at emperor colonies in order to continue monitoring colony status, especially in relation to the B15 iceberg. This will require entrance into the Cape Crozier (ASPA #124) and Beaufort Island (ASPA #105) Antarctic Specially Protected Areas. The applicant also proposes to collect up to 10 frozen emperor penguin carcasses found on the sea ice per year, and return them to the U.S. for anatomical studies.

Location

Cape Washington, Cape Crozier (ASPA #124) and Beaufort Island (ASPA #105).

Dates

September 1, 2003 to January 31, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–20597 Filed 8–12–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–13723]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 37–17938–01, Aventis Pasteur, Inc., Swiftwater, PA

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Aventis Pasteur, Inc. for Materials License No. 37–17938–01, to authorize release of its facility in Swiftwater, Pennsylvania for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Swiftwater, Pennsylvania facility for unrestricted use. Aventis Pasteur, Inc. authorized by NRC since April 20, 1978, to use radioactive materials for research and development purposes at the site. On October 10, 2002, Aventis Pasteur, Inc. requested that NRC release the facility for unrestricted use. Aventis Pasteur, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Aventis Pasteur, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML030160030, ML031150153, ML031110041, ML032090292, ML032110545, and ML032120700). Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania, this 5th day of August, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–20586 Filed 8–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meetings

DATE: Weeks of August 11, 18, 25, September 1, 8, 15, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 11, 2003

There are no meetings scheduled for the Week of August 11, 2003.

Week of August 18, 2003—Tentative

There are no meetings scheduled for the Week of August 18, 2003.

Week of August 25, 2003—Tentative

Monday, August 25, 2003

9:30 a.m. Discussion of Investigatory and Enforcement Issues (Closed—Ex. 7 & 5)

Thursday, August 28, 2003.

2:00 p.m. Discussion of Intragrovernmental Issues (Closed—Ex. 9)

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308).

This meeting will be Webcast live at the Wed address—*http://www.nrc.gov*

3 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, September 11, 2003.

1:30 p.m. Discussion of Security Issues (Closed—Ex.1).

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy/making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301)–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 7, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–20716 Filed 8–11–03; 9:56 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 18, OMB Control No. 3235–0121, SEC File No. 270–105.

Form F–80, OMB Control No. 3235–0404, SEC File No. 270–357.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form 18 is used for the registration of securities of any foreign government or political subdivision on a U.S. Exchange. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability. The information provided is mandatory and all information is made available to the public upon request. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total burden of 40 annual burden hours. It is estimated that 100% of the total reporting burden is prepared by the company. Also, persons who respond to the collection of information contained in Form 18 are not required to respond unless the form displays a currently valid control number.

Form F–80 is used by large publicly traded Canadian foreign private issuers registering securities offered in business combinations and exchange offers. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability. The information provided is mandatory and all information is made available to the public upon request. Form F–80 takes approximately 2 hours per response and is filed by 4 issuers for a total annual burden of 8 hours. The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission. Also, persons who respond to the collection of information contained in Form F–80 are not required to respond unless the form displays a currently valid control number.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

August 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20541 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Rule 17f–6 (17 CFR 270.17f–6), SEC File No. 270–392, OMB Control No. 3235–0447.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–6 under the Investment Company Act of 1940 (17 CFR 270.17f–6) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the rule's adoption, funds generally were required to maintain these assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. The requirement that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgment from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

The Commission estimates that approximately 2,154 funds effect commodities transactions and could deposit margin with FCMs under rule 17f–6 in connection with those transactions. Commission staff estimates that each fund uses and deposits margin with 2 different FCMs in connection with its commodity transactions.[2] Approximately 179 FCMs are eligible to hold fund margin under the rule.[3] The Commission estimates that each of the 2,154 funds spend an average of 1 hour annually complying with the contract requirements of the rule (*e.g.,* executing contracts that contain the requisite provisions with additional FCMs), for a total of 2,154 burden hours. The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions or are *de minimis*.[4] The estimate of average

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

[2] This estimate is based on information conversations with representatives of the fund industry.

[3] Commodity Futures Trading Commission, Annual Report (2002).

[4] The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the

Continued

burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 31, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20542 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form U–7D, SEC File No. 270–75, OMB Control No. 3235–0165.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection for information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Form U–7D is used to file the certificate required by rule 7(D)(5) (17 CFR 250.7), under the Public Utility Holding Company Act of 1935 (''Act'') 15 U.S.C. 79 *et seq.,* to establish the exempt status of financing entities which own assets leased to electric or gas utility companies for the use in the lessee's utility business. Unless it claims the exemption authorized by those sections and provides sufficient information to meet the statutory tests for the exemption, such financing company would meet the statutory definition of electric or gas utility company, under Section 2(a)(3) (''electric'') or Section 2(a)(4) (''gas'') of the Act, and such financing company would consequently be subject to regulation under the Act. Without the information provided on Form U–7D, the Commission would not have adequate access to the data used to establish that the filing company meets the requirements for exemption.

Respondents to the request for information in Form U–7D are registered public utility holding companies and their financing subsidiaries. Respondents must file a Form U–7D in order to receive exempt status. We estimate the average time to prepare the information required by Form U–7D at 3 hours per response based on our informal questioning selected respondents. Since there are approximately 8 respondents who file each year, the total annual respondent reporting burden is 24 hours at $115 per hour.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20593 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 26, SEC File No. 270–78, OMB Control No. 3235–0183.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information, summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget.

Rule 26, part 250.26 [17 CFR 250.26] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.,* establishes financial statement and recordkeeping requirements of public utility holding companies registered under the Act and all their subsidiary companies.

The Commission estimates that the total annual reporting burden of Rule 26 is approximately one (1) hour.

The estimate of average burden hours is made for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are *de minimis.*

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20594 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 62/Form U–R–1, SEC File No. 270–166, OMB Control No. 3235–0152.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection for information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Form U–R–1 is filed under Rule 62 (17 CFR 250.62), which implements sections 12(e) and 11(g) of the Public Utility Holding Company Act of 1935 (''Act'') 15 U.S.C. 79 *et seq.* Section 12(e) of the Act (15 U.S.C. 791(e), makes it unlawful to solicit ''any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary.'' Section 11(g) of the Act (15 U.S.C. 79k(g) prohibits, in pertinent part, the solicitation of proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan or any plan under Section 11 for the divestment of control, securities or other assets or for the dissolution of a registered holding company or any subsidiary thereof, unless the plan has been proposed or submitted to the Commission and is not made in contravention of any Commission rule and regulations or order.

Rule 62 prohibits the solicitation of authorization regarding any security of a registered holding company or any of its subsidiaries, in connection with any reorganization subject to Commission approval. Rule 62 also prohibits such solicitation regarding any transaction, which is the subject of an application or declaration filed with the Commission, except with respect to a solicitation, which has become effective pursuant to a declaration filed with the Commission. Every declaration under Rule 62, if in connection with any reorganization, is to be filed on Form U–R–1. Rule 62 exempts from the filing requirements solicitations to not more than 25 owners of securities or claims, and actions taken as a depositary or custodian of securities solicited by order.

Due primarily to subsequent enlargement of the scope of the Securities Exchange Act of 1934 (''34 Act''), the solicitations under the provisions of Rule 62 are now governed, as to both form and substance, by the provisions of the 34 Act. The filings specified by Rule 62 now consist merely of incorporating by reference the company's filing under Section 14 of the 34 Act as an exhibit to the application or declaration under the Act seeking authorization for the transaction to which the solicitation is ancillary. Rule 62 does govern the date of the commencement of the solicitation.

Form U–R–1 and Rule 62 allow the Commission to adequately enforce Sections 12(e) and 11(g) of the Act. Not requiring the information collection would seriously interfere with the Commission's efforts in this regard.

Respondents to the request for information in Form U–R–1 are registered public utility holding companies and their subsidiaries. We estimate the average time to prepare the information required by Form U–R–1 at 5 hours per response based on our informal questioning selected respondents. Since there are approximately 7 respondents who file each year, the total annual respondent reporting burden is 35 hours at $115 per hour.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Dated: August 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20595 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48298; File No. SR–NASD–2002–162]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Supervisory Control Amendments

August 7, 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 November 4, 2002, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on November 27, 2002.[3] On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change.[4] On August 7, 2003, the NASD filed Amendment No. 2 to the proposed rule change.[5] Amendment Nos. 1 and 2 are described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46859 (November 20, 2002), 67 FR 70990.

[4] Amendment No. 1 replaces and supercedes the original filing in its entirety.

[5] See letter from Patrice M. Gliniecki, Senior Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 7, 2003 (''Amendment No. 2''). In Amendment No. 2, among other things, NASD clarified the term ''heightened supervision'' as the term is used in proposed NASD Rule 3012, and the term ''heightened inspection procedures'' as that term is used in proposed NASD Rule 3010.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt new NASD Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. Below is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2510. Discretionary Accounts

(a) through (c) No change.

(d) Exceptions

This Rule shall not apply to:

(1) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a security shall be executed, *except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised for orders effected with or for an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis;*

(2) No Change.

Any exercise of time and price discretion must be reflected on the customer order ticket.

* * * * *

3010. Supervision

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with *applicable NASD Rules* [the Rules of this Association]. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) through (7) No change.

[(8) Each member shall designate and specifically identify to the Association one or more principals who shall review the supervisory system, procedures, and inspections implemented by the member as required by this Rule and take or recommend to senior management appropriate action reasonably designed to achieve the member's compliance with applicable securities laws and regulations, and with the Rules of this Association.]

(b) No change.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with *applicable NASD rules* [the Rules of this Association]. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses [and at least an annual inspection of each office of supervisory jurisdiction].

(A) Each member shall inspect at least annually every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations. [Each branch office of the member shall be inspected according to a cycle which shall be set forth in the firm's written supervisory and inspection procedures.]

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office [such cycle], the firm shall [give consideration to] *consider whether* the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location *require the non-supervisory branch office to be inspected more frequently than every three years. The non-supervisory branch office examination cycle and an explanation of the factors the member used in determining the frequency of the examinations in the cycle shall be set forth in the member's written supervisory and inspection procedures.*

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the firm shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The schedule and an explanation regarding how the member determined the frequency of the examination schedule shall be set forth in the member's written supervisory and inspection procedures.

Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) An office inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the income of the branch office manager's supervisor. For the purposes of this subsection only, the term ''heightened inspection'' shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected.

* * * * *

(g) Definitions

(1) No change.

(2) (*A*) ''Branch Office'' means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(A) through (D) renumbered as (i) through (iv).

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(3) No change.

3012. Supervisory Control System

(a) General Requirements

(1) Each member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office mangers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. A person who is senior to the producing manager must perform such supervisory reviews. However, if a member does not conduct a public business, or has a capital requirement of $5,000 or less, or employs 10 or fewer representatives, and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office who is in the same or similar position to the producing manager may conduct the supervisory reviews, provided that the person in the same or similar position does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years;

(B) procedures that are reasonably designed to review and monitor the following activities:

(i) all transmittals of funds (e.g., wires or checks, etc.) or securities from customers and third party accounts (i.e., a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office, ''in care of'' accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) customer changes of address and the validation of such changes of address; and

(iii) customer changes of investment objectives and the validation of such changes of investment objectives.

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the income of the producing manager's supervisor. For the purposes of this subsection only, the term ''heightened supervision'' shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised.

(b) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

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3110. Books and Records

(a) through (b) No change.

(c) Customer Account Information

(1) through (3) No change.

(4) For purposes of this Rule [and], *and Rule 2510* the term ''institutional account'' shall mean the account of:

(A) through (C) No change.

(d) Changes in Account Name or Designation

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4.

For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

* * * * *

IM–3110. Customer Account Information

(a) through (h) No Change.

(i) Holding of Customer Mail

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

* * * * *

9610. Application

(a) Where To File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of *NASD* [the Association] and provide a copy of the

application to the Office of General Counsel of NASD [Regulation].

(b) through (c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the original proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* On November 4, 2002, NASD filed with the Commission proposed rule change SR–NASD–2002–162. The rule change proposed new NASD Rule 3012 to require members to develop general and specific supervisory control procedures that independently test and verify and modify, where necessary, the members' supervisory procedures. In addition, the rule change proposed amendments to: (1) NASD Rule 3010(c) to require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures; [6] (2) NASD Rule 3110 to expand upon a members' supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; (3) NASD IM–3110 to provide guidance regarding when a member may hold mail for a customer who will be absent for a period of time; (4) NASD Rule 2510(d) to clarify the time limit on time-and-price discretionary authority; and (5) NASD Rule 9610 to incorporate into NASD Procedural Rules the ability of members to request an exemption from amended NASD Rule 3010(c).

The Commission received 72 comment letters in response to the **Federal Register** publication of SR–NASD–2002–162.[7] The comments submitted to the Commission are summarized and responded to by issue below. Additional proposed rule changes are also discussed below.

b. *General Comments on the Rule Change.* Many commenters stated that the effective enforcement of existing supervisory rules should be sufficient to protect investors.[8] These commenters frequently added that they viewed the proposed rules as an overreaction to the Gruttadauria case, which involved a producing branch manager who misappropriated millions of dollars in customer funds over a 15-year period. The commenters stated that the Gruttadauria case was not a result of inadequate supervisory systems but, instead, was a case of a single individual intent on defrauding customers.[9]

While NASD understands industry concerns that regulators not overreact to one case of violative conduct, NASD does not view the proposed rule change as a reaction to any particular legal or regulatory event. Rather, NASD believes that the proposed rule change is designed to enhance the current rules and examination efforts by specifically requiring members to establish adequate supervisory control systems. NASD also believes that the proposed rule change will strengthen its ability to fulfill its ongoing obligation to protect investors.

A majority of the commenters also suggested that implementing the proposed rule change would require firms to hire a large number of additional personnel to conduct the supervisory activities required by the proposed rules, thereby placing a significant financial burden on firms.[10] Many commenters believed that this cost would destroy the business model of independent contractors located in

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[6] NASD has filed with the Commission a separate proposed rule change to Rule 3010(g)(2) that addresses other situations where a location of a member may be considered a ''branch office'' and affects only the content of what is now being renumbered as paragraph (2)(A) of Rule 3010(g). *See* SR–NASD–2003–104. If the SEC approves the proposed rule change in No. SR–NASD–2003–104 prior to approving the rule change proposed in this filing, NASD will file an amendment to this proposal updating the rule language in the new Rule 3010(g)(2). Alternatively, if the SEC approves the proposed rule change in this rule filing prior to approving the proposed rule change in SR–NASD–2003–104, NASD will file an amendment to SR–NASD–2003–104 reflecting the changes set forth in this filing.

[7] List of comment letters has been prepared as Exhibit 2. Exhibit 2 is available in the Commission's Public Reference Room.

[8] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President, CEO, (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[9] *Id.; see also* Associated Securities Corp., Neal K. Nakagiri, President/CEO (12/19/02); AXA Advisors, John M. Lefferts, President (12/18/02); Cadaret, Grant & Co., Arthur F. Grant, President (12/17/02); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); National Society of Compliance Professionals, Inc., Joan Hinchman, Executive Director, President & CEO (1/8/03); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02).

[10] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); American Express Financial Advisors, Inc., Beth E. Weimer, VP & CCO (1/17/03); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02) & Another Letter (1/16/03) (additional comments); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, (No Date on Letter); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (No Date on Letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02).

small branch offices.[11] One commenter suggested that the proposed rule change be adopted in the form of ''principles for effective supervision'' or ''best practices'' that could be tailored to various business models rather than rules that would apply to all firms.[12]

NASD does not agree that the proposed rule change should be adopted in the form of ''principles or best practices.'' NASD believes that the degree of authority carried by the proposed rules is necessary to encourage the conduct intended by the rule changes. However, as discussed in detail below, NASD agrees that greater flexibility is needed in certain respects to account for variations in members' business models.

i. *Comments on Proposed NASD Rule 3012 (Supervisory Controls) and Proposed Changes.* As originally proposed, NASD Rule 3012 requires that each member establish supervisory control procedures that (a) test and verify that the member's supervisory procedures are reasonably designed to comply with the federal securities laws and regulations and NASD rules and (b) amend the supervisory procedures where testing and verification identifies the need to do so. NASD Rule 3012 also requires that the supervisory control procedures be performed by persons who are ''independent'' from those activities being tested and verified and the persons who directly supervise those activities.

In addition, NASD Rule 3012 requires that written policies and procedures to administer the supervisory controls specifically address transmittals of funds between accounts, changes of customers' addresses, and changes in customers' investment objectives. These designated policies and procedures must include a means or method of customer confirmation, notification, or follow-up that can be documented.

Many commenters requested clarification regarding who would be sufficiently ''independent'' to perform the supervisory control procedures required under proposed NASD Rule 3012.[13] A large number of commenters contended that restricting senior supervisory personnel from performing and/or overseeing the review of a firm's supervisory control procedures could compromise the quality of the review. The commenters stated that the alternative approach of assigning someone from another division of the firm, such as Marketing or Operations, to perform the review could result in a supervisory review that is less sensitive to compliance requirements.[14] At least one commenter stated that the ''independence'' requirement in NASD Rule 3012 appears to refer to someone outside of the firm.[15]

NASD agrees with commenters' concerns and is amending proposed NYSE Rule 3012 to eliminate the requirement that persons establishing, maintaining, and enforcing supervisory control policies and procedures be ''independent.'' The proposed rule now will require that a member designate and specifically identify to NASD one or more principals who will establish, maintain, and enforce supervisory control procedures that will test and verify that the members' supervisory procedures are sufficient and create additional or amend supervisory procedures where the need is identified by such testing and verification. Of course, NASD expects that the designated principals will test and verify the adequacy of the supervisory control procedures in a manner that is independent of a member's countervailing business considerations.

Importantly, as stated in proposed NYSE Rule 3012, these policies and procedures must include procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers,

[11] Associated Securities Corp., Neal K. Nakagiri, President/CEO (12/19/02); AXA Advisors, John M. Lefferts, President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

[12] 1st Global, Inc., Stephen Batman, CEO (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[13] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman ''Self-Regulation and Supervisory Practices Committee (12/18/02); United Planners'' Financial Services of America, President, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[14] 21st Century Financial Services, Inc., Charles Mazziotti, President (12/17/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Brookstreet Securities Corporation, Stanley C. Brooks, President, CEO (12/4/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Duerr Financial Corporation, William Partin, President (11/27/02); Eagle One Investments, LLC, Steven J. Svoboda, President (12/16/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); Financial Northeastern Companies, Dominick Del Duca, CCO (12/12/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); First Heartland Capital, Inc., Julius J. Anderson, Vice President (12/27/02); FMN Capital Corporation, David W. Schofield, Director of Operations and Compliance 12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Iron Street Securities Inc., Robert L. Hamman, President (12/24/02); JKR & Company, Inc., J. Kemp Richardson, President (12/10/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02) & Another Letter (1/16/03) (additional comments); Kyson & Co., Kao Sheng Lin, President (11/25/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Liberty Life Securities, LLC, John T. Treece, President (1/15/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Main Street Securities, LLC, David L. Meckenstock, VP/CCO (12/13/02); Monitor Capital, Inc., Hsiao-wen, President (11/25/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Securities, Inc., William L. Sabol, President (11/26/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); National Planning Corporation, M. Shawn Dreffein, President (12/2/02); Pacific West Securities, Inc., Philip A. Pizelo, President (1/14/03); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Quest Securities, Inc., Robert J. Schoen, President (11/22/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); The Leaders Group, Inc., Z. Jane Riley, Compliance Officer (12/13/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (no date on letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); Wharton Equity Corp., Malcom A. Morrison, President (1/10/03); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02); World Trade Financial Corporation, Rod P. Michel, President (12/31/02).

[15] See Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

regional or district sales managers, or any person performing a similar supervisory function. Proposed NYSE Rule 3012 provides that a person who is senior to the producing manager must perform these supervisory reviews; however, if a member does not conduct a public business, or has a capital requirement of $5,000 or less, or employs ten or fewer representatives, and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office who is in the same or similar position to the producing manager may conduct the supervisory review, provided that the person does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years.

The supervisory policies and procedures required under proposed Rule 3012 also must include procedures reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the income of the producing manager's supervisor. The proposed rule does not mandate the contents of such heightened supervisory procedures, in recognition of the fact that such procedures will vary depending on the business models and needs of each particular member. In establishing such heightened supervisory procedures, however, members should consider such elements as unannounced supervisory reviews, an increased number of supervisory reviews by different reviewers within a certain period, a broader scope of activities reviewed, and/or having one or more principals approve the supervisory review of such producing managers. These examples are meant to illustrate the type of procedures a member may want to include in its heightened supervisory procedures and are not meant to be an exclusive or exhaustive list of heightened supervisory procedures a member may need to put in place. NASD believes that proposed Rule 3012, as amended herein, should allow members sufficient flexibility to create the supervisory control procedures mandated by the rule without creating undue burdens and costs.

Several commenters mentioned that the requirements in proposed NASD Rule 3012 to test and verify a member's supervisory procedures and make any changes identified through the testing and verification procedures appear to be substantially similar to NASD Rule 3010(a)(8), which requires a member to review the supervisory system and make any appropriate changes. Commenters stated that it would be redundant to require a member to conduct two separate, yet very similar, reviews of the member's supervisory procedures to determine if changes need to be made.[16]

NASD is aware of the similarity of the two supervisory review requirements. Accordingly, NASD is amending the proposed rule change to combine the two supervisory review requirements into proposed NASD Rule 3012 and eliminate NASD Rule 3010(a)(8) altogether.

One commenter stated that proposed NASD Rule 3012's requirement that specific supervisory controls be in place to address the transmittal of funds between accounts, changes of customers' addresses, and changes in customers' investment objectives should apply only to retail customer activity and not to institutional customer activity. An institutional exemption is sought because much of that business is done on a delivery-versus-payment or receipt-versus-payment basis or via prime brokerage arrangements that involve system and controls that are markedly different from retail account servicing.[17] NASD, however, believes that it is reasonable and appropriate that regulatory oversight in the sensitive areas designated in proposed NASD Rule 3012 extend to institutional account activity.

NASD is retaining NASD Rule 3012's originally proposed provision that any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. (''NYSE'') shall be deemed to be in compliance with NASD Rule 3012. NASD believes that this provision helps promote consistency between NASD's and the NYSE's supervisory control requirements.

ii. *Comments on NASD Rule 3010 (Supervision) and Proposed Changes.* As originally proposed, the changes to NASD Rule 3010 require that office inspections be conducted by a person who is ''independent'' from the activities being performed at the office and the people providing supervision to that office. In addition, office inspections must include, without limitation, the testing and verification of the member's supervisory policies and procedures in the areas of: Safeguarding customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes; and validation of changes in customer account information.

Many commenters requested clarification regarding who would be sufficiently ''independent'' to conduct the office inspections required in NASD Rule 3010.[18] At least one commenter stated that the ''independence'' requirement in NASD Rule 3010 appears to refer to someone within the firm who does not receive compensation based on sales.[19] Many commenters stated that the ''independence'' requirement in NASD Rule 3010(c)

[16] Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); Financial Northeastern Companies, Dominick Del Duca, CCO (12/12/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date on letter); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO.

[17] 1st Global, Inc., Stephen Batman, CEO (12/18/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[18] 1st Global, Inc., Stephen Batman, CEO; AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02); MML Investors Services, Inc., Michael L. Kerley, VP/Chief Legal Officer (12/17/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02); United Planners' Financial Services of America, Thomas H, President, CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02).

[19] *See* Woodbury Financial Services, Inc., Michael G. Brennan, Associate Counsel/Assistant Secretary (12/18/02).

would severely reduce the number of principals eligible to conduct branch exams and would put enormous pressure on home office exam personnel to conduct more office inspections.[20] Commenters suggested that if home office exam personnel had to conduct more office inspections, the audit cycle would have to be extended to multiple-year durations and the quality of the audits would decline.[21]

In response to commenters' concerns, NASD is amending Rule 3010 to replace the proposed ''independence'' requirement with a prohibition that an office inspection cannot be conducted by a branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). In addition, members must establish heightened inspection procedures in situations where the person conducting the inspection either works in an office supervised by the branch office manager's supervisor or reports to the branch office manager's supervisor *and* the branch office manager generates 20% or more of the supervisor's income. The proposed rule does not mandate the contents of such heightened inspection procedures, in recognition of the fact that such procedures will vary depending on the business models and needs of each particular member. In establishing such heightened inspection procedures, however, members should consider such elements as unannounced office inspections, increased frequency of inspections, a broader scope of activities inspected, and/or having one or more principals review and approve the office's inspections. These examples are meant to illustrate the type of procedures a member may want to include in its heightened inspection procedures and are not meant to be an exclusive or exhaustive list of heightened inspection procedures a member may need to put in place. NASD believes that this proposed rule change should allow members sufficient flexibility to assign personnel to conduct office inspections without creating undue burdens and costs.

Because NASD has removed the ''independence'' requirement regarding inspections conducted pursuant to NASD Rule 3010(c), NASD is removing the provision in NASD Rule 3010(c) that would have allowed members to seek an exemption from the independence requirement in NASD Rule 3010(c) subject to specified terms and conditions. NASD is also removing NASD Rule 3010(c) from the list of rules in NASD Rule 9610(a) from which a member can seek an exemption.

Many commenters argued that the current supervisory system, which allows Office of Supervisory Jurisdiction (''OSJ'') managers to conduct office inspections of branch and satellite offices should be retained because it was both effective and cost efficient.[22] Commenters noted that OSJ managers are the most familiar with registered representatives and activities located at particular offices, and therefore, are the most qualified to perform the periodic inspections. In addition, OSJ managers' auditing of branch and satellite offices serves to reinforce their accountability for the registered representatives' actions.[23]

As stated previously, the proposed change to NASD Rule 3010 has eliminated the proposed ''independence'' requirement with a prohibition that an office inspection cannot be conducted by a branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). This structure allows OSJ managers to conduct office inspections in any location where the OSJ manager is senior to the office's branch manager. In addition, NASD is amending NASD Rule 3010 to codify previous NASD guidance that non-supervisory branch offices be inspected every three years and that all non-branch locations be inspected periodically.[24]

iii. *Comments on Changes to NASD Rule 2510 (Discretionary Accounts) and Proposed Changes.* As originally

[20] 1st Global, Inc., Stephen Batman, CEO (12/18/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); American Express Financial Advisors, Inc., Beth E. Weimer, VP & CCO (1/17/03); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Equity Services, Inc., Gregory D. Teese, VP (12/18/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO, (12/17/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Linsco/Private Ledger, Corp., James F. McGuire, SVP & CCO (1/16/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (No Date on Letter); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (No Date on Letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02).

[21] 21st Century Financial Services, Inc., Charles Mazziotti, President (12/17/02); AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Brookstreet Securities Corporation, Stanley C. Brooks, President, CEO (12/4/02); Cambridge Investment Research, Inc., Terry L. Lister, General Counsel (12/20/02); Clark/Bardes Financial Services, Inc., Kevin Ballou, President (3/17/03); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); Duerr Financial Corporation, William Partin, President (11/27/02); Eagle One Investments, LLC, Steven J. Svoboda, President (12/16/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); Financial Network Investment Corp., Jack R. Handy, Jr., President (12/13/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); First Heartland Capital, Inc., Julius J. Anderson, Vice President; (12/27/02); FMN Capital Corporation, David W. Schofield, Director of Operations (12/18/02); IFG Network Securities, Inc., R. Jack Conley, President/CEO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Iron Street Securities Inc., Robert L. Hamman, President (12/24/02); JKR & Company, Inc., J. Kemp Richardson, President (12/10/02); Kyson & Co., Kao Sheng Lin, President (11/25/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Liberty Life Securities, LLC, John T. Treece, President (1/15/03); Locust Street Securities, Inc., Jacqueline C. Conley, VP, Compliance (12/13/02); Main Street Securities, LLC, David L. Meckenstock, VP/CCO (12/13/02); Monitor Capital, Inc., Hsiao-wen, President (11/25/02); Multi-Financial Securities Corp., Patrick H. McEvoy, President/CEO (12/16/02); Mutual Securities, Inc., William L. Sabol, President (11/26/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); MWA Financial Services, Robert M. Roth, President (12/18/02); National Planning Corporation, M. Shawn Dreffein, President (12/2/02); Pacific West Securities, Inc., Philip A. Pizelo, President (1/14/03); PrimeVest Financial Services, Inc., Kevin P. Maas, VP, Director of Compliance (no date); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Quest Securities, Inc., Robert J. Schoen, President (11/22/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); The Leaders Group, Inc., Z. Jane Riley, Compliance Officer and/CEO (12/13/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Vestax Securities Corp., R. Jack Conley, President/CEO (12/17/02); Washington Square Securities, Inc., Tom K. Rippberger, VP/CCO (no date on letter); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman, (12/16/02); Wharton Equity Corp., Malcom A. Morrison, President (1/10/03); World Group Securities, Inc., Leesa M. Easley, Chief Legal Officer (12/19/02); World Trade Financial Corporation, Rod P. Michel, President (12/31/02).

[22] *Id.*

[23] *Id.*

[24] *See* NASD *Notice to Members* 98–38 (May 1998); NASD *Notice to Members* 99–45 (June 1999).

proposed, changes to NASD Rule 2510(d)(1) require that time and price discretionary authority be limited to the day it is granted, absent written authorization to the contrary. Several commenters argued that the one-day time and price discretionary authority should be limited only to retail accounts and that NASD should craft an exemption for institutional accounts.[25] Commenters argue that large orders for institutional accounts are ''worked'' over one or more days on a Good-Till-Cancelled/Not-Held basis.

NASD believes that a general institutional exemption is inappropriate. However, in response to commenters' concerns, NASD is amending NASD Rule 2510 to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders effected with or for an institutional account, as that term is defined in NASD Rule 3110(c)(4), that are exercised pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. NASD is also making a technical amendment to NASD Rule 3110(c)(4) to include a reference to the definition's applicability to NASD Rule 2510.

Commenters requested that NASD clarify that the requirement to obtain written instructions for the exercise of time and price discretion beyond the business day it was granted allows customers to issue general ''standing'' instructions, rather than issuing written instructions on an order-by-order basis.[26]

The current text of NASD Rule 2510(d) clearly limits the exercise of time and price discretion to ''the purchase or sale of a definite amount of a specified security. * * *'' Any written authorization granting time and price discretion must comply with this established, trade-specific standard. Customers who wish to grant more extensive discretionary authority to their registered representatives may do so pursuant to a fully executed trading authorization.

iv. *Comments on NASD Rule 3110 (Books and Records).* As originally proposed, changes to NASD Rule 3110 require that, before a customer order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a designated person may approve any changes in account names or designations. The designated person also must document the essential facts relied upon in approving the changes and maintain the record in a central location. The designated person must pass a qualifying principal examination appropriate to the business of the firm before he or she can approve these changes.

One commenter stated that its clerical staff is responsible for making changes to account names or designations and that requiring a principal to authorize the changes and be informed of the surrounding facts would place undue burden and cost upon the firm.[27]

NASD understands the concerns that the proposed rule changes may place additional costs and burdens upon members. However, NASD believes that account names and designations are material information that must be protected from possible fraudulent activity. Requiring a principal to authorize the change and be aware of the surrounding facts for the change is a relatively low-cost method of protecting this information.

The same commenter stated that the requirement that a name or account designation be placed on ''each transaction'' is impractical for the administration of a variable life or variable annuity policy because dozens of transactions involving expense and insurance charges automatically occur each month for the multitude of funds associated with each policy.[28]

NASD proposed this rule change to promote consistency with the SEC's books and records rules. Specifically, SEC Rule 17a–3(a)(6) requires that a memorandum of each brokerage order identify, among other things, the account for which the order was entered.[29] NASD expects that members, regardless of the type of securities business they engage in, will comply with this requirement in the same manner that they comply with the SEC's books and records requirements.

At least one commenter requested clarification regarding whether a firm may avoid duplicate records by maintaining the ''Account Designation Change'' documentation ''in the location whether the determination and approval occurs,'' rather than in the central location of the ''Home Office.''[30]

NASD does not believe that the new account designation change recordkeeping requirement should be unduly complicated or burdensome for members. Accordingly, NASD has amended the proposed rule change to require members to preserve these records in a manner substantially similar to the record retention requirements of SEC Rule 17a–4.[31] Specifically, the proposed rule change requires members to preserve account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4. This proposed change will not only allow members to use existing recordkeeping systems to meet this requirement, but it will enable members to make the account designation change documentation promptly available if requested by NASD examination staff. It also promotes consistency with NASD Rule 3110's existing mandate that members' recordkeeping format, medium, and retention periods comply with SEC Rule 17a–4 requirements.

v. *Comments on IM–3110 (Customer Account Information).* As originally proposed, changes to IM–3110 would permit a member, upon a customer's written instructions, to hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but not to exceed (A) two months if the member is advised that the customer will be on vacation or traveling or (B) three months if the customer is going abroad.

At least one commenter stated that a member would have to impose additional recordkeeping and administrative controls to avoid lost or misplaced mail in situations where a customer that travels frequently looks to a member to provide custody of his or her mail.[32] If a member provides this service to its customers, NASD understands that the member may have to put in place additional procedures to comply with the limitations set forth in this rule. However, the rule will help to ensure that members that do hold mail for customers who are away from their usual addresses, do so only pursuant to the customers' written instructions and

[25] A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02); Charles Schwab & Co., Inc., Selwyn J. Noteliovitz, SVP (2/25/03); National Society of Compliance Professionals, Inc., Joan Ht & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[26] National Society of Compliance Professionals, Inc., Joan Hinchman, Executive Director, President & CEO (1/8/03); Securities Industry Association, Self-Regulation and Supervisory Practices Group, Christopher R. Franke, Chairman—Self-Regulation and Supervisory Practices Committee (12/18/02).

[27] Midland National Life Insurance, P.M. Phalen, Assistant Vice President (12/17/02).

[28] *Id.*

[29] 17 CFR 240.17a–3(a)(6).

[30] *See* A.G. Edwards & Sons, Inc., Brian C. Underwood, SVP (12/18/02).

[31] 17 CFR 240.17a–4.

[32] John Hancock Financial Services, Inc., Robert H. Watts, SVP/CCO (12/17/02) & additional comments (1/16/03).

for a specified, relatively short period of time. Thus, there is a reduced likelihood of risk that customers would not receive account statements or other account documentation at their usual addresses. In addition, the rule will help to ensure that customers provide the firms with which they do business current address information, insofar as a firm will not be permitted to hold mail indefinitely.

vi. *Comments on the Effective Date of the Rule Change.* At least one commenter has requested that the effective date of any new requirements be delayed for 6 to 9 months after the approval date.[33] In response, NASD is proposing to establish an effective date of six months from SEC approval of the proposed rule change to allow members sufficient time to address any necessary procedural or system changes.

vii. *Comments on the Insufficient Comment Process.* Many commenters criticized NASD for not publishing the proposed rule changes for comment prior to filing them with the SEC, stating that the initial comment period that followed the filing date was insufficient for everyone who wanted to comment to submit their comments in a timely manner. Commenters requested additional time to submit further comments on the proposed rule changes.[34]

In response to earlier requests for additional time to submit comments on the proposed rule changes, the initial comment period was extended an additional 30 days. In addition, it is our understanding that the SEC will be publishing the new proposed rule changes for comment to allow concerned parties to submit their comments on the proposed changes described herein.

[33] Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02).

[34] AIG Advisor Group, Inc., Bridget M. Gaughan, EVP (12/30/02); Commonwealth Financial Network, Peter T. Wheeler, President (12/17/02); CUNA Brokerage Services, Inc., Marcia L. Martin, President (12/19/02); FFP Securities, Inc., Craig A. Junkins, President/CEO (12/18/02); First Allied Securities, Inc., Adam Antoniades, President/COO (12/18/02); Invest Financial Corporation, Lynn R. Niedermeier, President/CEO (12/17/02); Investment Centers of America, Inc., Greg Gunderson, President (12/16/02); Lesko Securities, Inc., Charles Lesko, Jr., President (12/18/02); Mutual Service Corp., Dennis S. Kaminski, EVP/CAO (12/18/02); Pacific Select Distributors, Inc., John L. Dixon, President (12/18/02); Princor Financial Services Corp., Minoo Spellerberg, Compliance Officer (12/16/02); Rhodes Securities, Inc., Sandra T. Masek, EVP/COO (12/17/02); Securities America, Inc., Bryan R. Hill, President (12/16/02); Transamerica Financial Advisors, Inc., Sandy Brown, President/COO (12/16/02); United Planners' Financial Services of America, Thomas H. Oliver, President/CEO (12/13/02); USAllianz Securities, Inc., Michael D. Burns, CCO (12/16/02); Waterstone Financial Group, Inc., Thomas A. Hopkins, Chairman (12/16/02).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[35] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of its employees and thereby reduce the potential for customer fraud and theft.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The SEC received 72 written comment letters. NASD's response to those comment letters is discussed in Section II above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2002–162 and should be submitted by September 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20601 Filed 8–8–03; 8:45 am]

BILLING CODE 8010–01–P

[35] 15 U.S.C. 78o–3(b)(6).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48285; File No. SR–NSCC–2003–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Trade Comparison Service and Fee Schedule

August 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on May 20, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will make conforming changes to NSCC Rule 7 (Comparison and Trade Recording Operation) and Addendum A (Fee Structure) that were inadvertently not made by previous rule changes. The current rule change will delete references to Demand Withhold and

[1] 15 U.S.C. 78s(b)(1).

Demand As-Of processing with regard to over-the-counter equity securities and Demand As-Of processing for debt securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed filing is to make technical corrections relating to two previous approved NSCC rule filings.[3] Both filings modified NSCC Procedure II (Trade Comparison Service) but failed to make corresponding changes to Rule 7 and Addendum A. This current filing will make the necessary corresponding changes in Rule 7 and Addendum A by deleting references to Demand Withhold and Demand As-Of processing with regard to over-the-counter equity securities and Demand As-Of processing for debt securities.

NSCC believes that this proposed rule change is consistent with the provisions of Section 17A of the Act[4] and the rules and regulations thereunder because by making technical changes to NSCC's rules to properly reflect the transaction types that are permitted by NSCC with regard to over-the-counter equity and debt securities, the proposed rule change should help promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition.

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[5] and Securities Exchange Act Rule 19b–4(f)(1)[6] because it constitutes a stated practice with respect to the administration of an existing rule of NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–10. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–10 and should be submitted by September 3, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20543 Filed 8–13–03; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release Nos. 39864 (Apr. 14, 1998), 63 FR 19781 (Apr. 21, 1998) [File No. SR–NSCC–97–14] and 47494 (Mar. 13, 2003), 68 FR 13975 (Mar. 21, 2003) [File No. SR-NSCC–2002–10].

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48284; File No SR–NSCC–2003–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Schedule Revisions for the Insurance Processing Service

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 16, 2003, NSCC filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule for the Initial Application Information (''APP'') feature of its Insurance Processing Service (''IPS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees that NSCC charges for the APP feature of its IPS. The effective date for the adjustment is (i) June 1, 2003, for changes resulting in a decrease in fees and (ii) July 1, 2003, for all other changes. The proposed rule change also establishes APP fees for members for whom settlement is not available. These fees are effective June 16, 2003.

The current fee for APP for member for whom settlement is available is as follows: 0 to 499 items per month, $5.00 per item; 500 to 1,249 items per month, $4.00 per item; 1,250 to 2,499 items per month, $2.00 per item; and for more than 2,499 items per month, $1.00 per item. Pursuant to this rule change, the new APP fees will be as follows: 0 to 1,999 items per month, $3.00 per item; 2,000 to 3,499 items per month, $2.00 per item and for more than 3,499 items per month, $1.00 per item. The fee for APP for members for whom settlement is not available will be: 0 to 1,999 items per month, $1.50 per item and for more than 1,999 items per month, $1.00 per item.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified participants who use IPS of the fee changes. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] because it establishes or changes a due, fee, or other charge of NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–13 and should be submitted by September 3, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20544 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48299; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, Rule 401 (''Business Conduct''), Rule 408 (''Discretionary Power in Customers' Accounts''), and Rule 410 (''Records of Orders'')

August 7, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. On November 20, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for public comment in the **Federal Register** on November 27, 2002.[4] On April 28, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On August 7, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[6] Amendment Nos. 2 and 3 are described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments address several issues involving the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, from Darla Stuckey, Corporate Secretary, NYSE, dated November 18, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange added ''customer changes of investment objectives'' to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.

[4] *See* Securities Exchange Act Release No. 46858 (November 20, 2002), 67 FR 70994 (''Original Notice'').

[5] In Amendment No. 2, the Exchange submitted a response to comments received in response to the Original Notice. Also, the Exchange amended the rule text to address certain of the commenters' concerns.

[6] Amendment No. 3 replaces and supercedes Amendment No. 2 in its entirety.

establishment, maintenance, and testing of internal controls as well as several supervisory issues. Included are amendments to NYSE Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, NYSE Rule 401 (''Business Conduct''), NYSE Rule 408 (''Discretionary Power in Customers' Accounts''), and NYSE Rule 410 (''Records of Orders'').

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Offices—Approval, Supervision and Control

Rule 342. (a) through (e) unchanged.

Supplementary Material:

.10 through .18 unchanged.

.19 Supervision of Managers.—Members and member organizations must develop and implement written policies and procedures reasonably designed to independently review and supervise customer account activity conducted by each Branch Office Manager, Sales Manager, Regional/District Sales Manager, or by any person performing a similar supervisory function. Such supervisory reviews must be performed by a qualified person pursuant to Rule 342.13 who is senior to the Manager under review.

.20 through .22 unchanged.

.23 Internal Controls—Pursuant to paragraphs (a) and (b) of this Rule, members and member organizations must develop and maintain adequate controls over each of its business activities. Such controls must provide for the establishment of procedures for independent verification and testing of those business activities. An ongoing analysis, based upon appropriate criteria, may be employed to assess and prioritize those business activities requiring independent verification and testing. A review of each member's or member organization's efforts with respect to internal controls, including a summary of tests conducted and significant exceptions identified, must be included in the Annual Report required by .30 of this Rule.

The independent verification and testing procedures shall not apply to members and member organizations that do not conduct a public business, or that have a capital requirement of $5,000 or less, or that employ 10 or fewer registered representatives.

(See also Rule 401(b))

.30 Annual Report.—By April 1 of each year, each member not associated with a member organization and each member organization shall prepare, and each member organization shall submit to its chief executive officer or managing partner, a report on the member*'s* or member organization's supervision and compliance effort during the preceding year. The report shall include:

(a) A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year pursuant to Rules 351(d) and (e)(ii).

(b) Identification and analysis of significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and an assessment of the preceding year's efforts of this nature, and

(c) Discussion of the preceding year's compliance efforts, new procedures, educational programs, etc. in each of the following areas:

(i) Antifraud and trading practices,
(ii) Investment banking activities,
(iii) Sales practices,
(iv) Books and records,
(v) Finance and operations, [and]
(vi) Supervision[.] *, and*
(vii) Internal controls.

If any of these areas do not apply to the member or member organization, the report should so state.

Business Conduct

Rule 401. *(a)* Every member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

(b) Each member and member organization shall maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under Rule 342.23, specifically with respect to the following activities:

(1) Transmittals of funds (e.g., wires, checks, etc.) or securities:

(i) from customer accounts to third party accounts (i.e., a transmittal that would result in a change of beneficial ownership);

(ii) from customer accounts to outside entities (e.g., banks, investment companies, etc.);

(iii) from customer accounts to locations other than a customer's primary residence (e.g., post office box, ''in care of'' accounts, alternate address, etc.); and

(iv) between customers and registered representatives (including the hand-delivery of checks).

(2) Customer changes of address.

(3) Customer changes of investment objectives.

The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.

Discretionary Power in Customers' Accounts

Rule 408

(a) through (c) unchanged.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. *The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised by Floor brokers pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis. Any exercise of time and price discretion must be reflected on the order ticket.*

Records of Orders

Rule 410. (a) Every member or [his] *member* organization *must* [shall] preserve for at least three years the first two years in an easily accessible place, a record of:

[Transmitted to Floor

(1) Every order transmitted directly or indirectly by such member or organization to the Floor, which record shall include the name and amount of the security, the terms of the order, the time when it was so transmitted, and the time at which a report of execution was received.

Carried to the Floor]

[(2)] *(1)* every order received by such member or *member organization,* either orally or in writing, [and carried by such member to the Floor,] which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so received and the time *at* [as] which a report of execution was received.

[Entered Off Hours]

[(3)] *(2)* every order entered by such member or *member* organization into the Off-Hours Trading Facility (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), which record *must* [shall] include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received.

[Cancellation]

[(4)] *(3)* the time of the entry of every cancellation of an order covered by (1)[,] *and* (2) [and (3)] above.

[By Accounts] *Changes In Account Name or Designation*

Before any order covered by (1)[,] *or* (2) [or (3)] above is executed, there *must*

[shall] be placed upon the order slip or other *similar* record of the member[,] or [his] *member* organization the name or designation of the account for which such order is to be executed. No change in such account name (*including related accounts*) or designation (*including error accounts*) shall be made unless the change has been authorized by [the] *a* member*,* [or another member,] allied member, or a person or persons designated under the provisions of Rule 342(b)(1). [in his organization who shall,] *Such person must,* prior to giving his *or her* approval of [such] *the account designation* change, be personally informed of the essential facts relative thereto and [shall] indicate his *or her* approval of such change in writing on the order *or other similar record of the member or member organization. The essential facts relied upon by the person approving the change must be documented in writing and maintained with the order or other similar record for at least three years, the first two in an easily accessible place as that term is used in Securities Exchange Act Rule 17a–4.*

Exceptions

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

(b) Every order *in any manner transmitted or carried to the Floor and* [covered by (1) or (2) above to be] executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder *must* [shall] be identified in a manner that will enable the executing member to disclose to other members that the order is subject to those provisions.

(See also Rules 112A.10 and 123A.45.)

.10 For purposes of this Rule, a person designated under the provisions of Rule 342(b)(1) to approve account name or designation changes must pass an examination acceptable to the Exchange.

INTERPRETATION

Rule 342 OFFICES—APPROVAL, SUPERVISION AND CONTROL

(a)(b)

.03 Annual Branch Office Inspection

[At least annual b]*B*ranch office inspections *by members and* member organizations are expected *to be conducted at least annually* pursuant to this Rule, unless *it has been* demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory *practice, other* arrangements[,] *may satisfy the Rule's requirements.* [certain offices may not warrant an annual inspection.] *All required inspections must be conducted by a person who is independent of the direct supervision or control of the branch office (i.e., not the Branch Office Manager, or any person who reports to such Manager, or any person to whom such Manager directly reports).* Written reports of these inspections*, or the written authorization of an alternative arrangement,* are to be kept on file by the organization for a minimum period of three years.

An annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas:

1) Safeguarding of customer funds and securities,

2) Maintaining books and records,

3) Supervision of customer accounts serviced by Branch Office Managers,

4) Transmittal of funds between customers and registered representatives and between customers and third parties,

5) Validation of customer address changes, and

6) Validation of changes in customer account information.

For purposes of this interpretation, ''annual*ly*'' means once in a calendar year.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 15, 2002, the Exchange submitted to the Commission File No. SR–NYSE–2002–36, which proposed several rule amendments intended to strengthen members' and member organizations' supervisory procedures and internal controls. Included are amendments to NYSE Rule 342 (''Offices—Approval, Supervision and Control'') and the Interpretation to that Rule, NYSE Rule 401 (''Business Conduct''), NYSE Rule 408 (''Discretionary Power in Customers' Accounts''), and NYSE Rule 410 (''Records of Orders'').

On November 18, 2002, Amendment No. 1 was submitted to the SEC, which added paragraph (b)(3) to NYSE Rule 401 to include ''customer changes of investment objectives'' with the enumeration of business activities subject to written policies and procedures.

The filing was published in the **Federal Register** for comment on November 27, 2002.[7] The comment period, which ended January 17, 2003, resulted in letters from two NYSE member organizations (A.G. Edwards & Sons, Inc. and Charles Schwab & Co.), a letter from a non-NYSE member organization (Cadaret, Grant & Co.),[8] and a letter from the Securities Industry Association (''SIA'').[9] Proposed rule text amendments representing the Exchange's response to industry comments were submitted to the Commission on April 25, 2003 as Amendment No. 2. Amendment No. 3 subsumes Amendment No. 2 and includes additional amendments requested by Commission staff. Several comments and concerns expressed in the A.G. Edwards, Schwab, and SIA letters are very similar and thus will be addressed collectively in this filing as remarks from the ''Commenters.'' When an issue is unique to a particular letter, it will be noted. Amendments to SR–NYSE–2002–36 proposed by the Exchange in response to this collective commentary, as well as discussion of the issues raised, follow:

General Issue

The SIA suggests that, given implementation costs and business model differences, the proposed rule amendments should be adopted in the form of ''principles for effective

[7] *See* note 4 *supra.*

[8] While this letter references the NYSE filing, its comments substantively address the comparable NASD filing (SR–NASD–2002–162), and therefore the comments made in this letter will not be discussed herein.

[9] *See* letters from Brian Underwood, Senior Vice President, Director of Compliance, A.G. Edwards & Sons, Inc., dated December 18, 2002 (''A.G. Edwards Letter''); Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated December 18, 2002 (''SIA Letter''); Selwyn J. Noteovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated February 25, 2003 (''Schwab Letter''), collectively (''Commenters''); and Arthur Grant, President, Cadaret, Grant & Co (''Cadaret Letter''), dated December 17, 2002, to Jonathan G. Katz, Secretary, Commission.

supervision'' or ''best practices'' that could be tailored to various business models rather than ''prescriptive rules that apply to firms across the board.''

The Exchange does not agree that the proposed rules should be adopted in the form of ''principles'' or ''best practices.'' The degree of authority carried by rules and their interpretations is deemed to be the appropriate impetus to encourage the conduct intended by the amendments. However, as discussed in detail below, the Exchange agrees that greater flexibility is needed in certain respects to account for variations in member organization business models.

Independent Supervision of Managers' Activity

Proposed NYSE Rule 342.19 requires written policies and procedures reasonably designed to independently supervise the customer account activity of Sales Managers. The Commenters seek clarification of the ''independence'' standard. It is contended that individuals within a firm at equal or higher organizational levels, peripherally involved, or who receive an indirect benefit from the activity being reviewed may, nevertheless, have sufficient independence to perform this function.

In response, the proposed amendments to NYSE Rule 342.19 have been revised to provide greater flexibility by clarifying that reviews of Sales Managers' customer activity may be conducted by a ''qualified person,'' provided such person is senior to the manager (*i.e.*, not the manager him/herself, or any person with the same job function as such manager,[10] or any person subordinate to the manager). The proposed rule has also been revised to make clear that the ''qualified person'' standard, in the context of NYSE Rule 342.19, is defined by NYSE Rule 342.13, which requires passing specified supervisory qualification examinations (*e.g.*, Series 9/10).

Supervisory Controls and Independent Testing and Verification

Proposed NYSE Rule 342.23 requires members and member organizations to develop adequate controls over each of their business activities. The Rule further requires that such controls provide for the establishment of procedures for independent verification and testing of those business activities. The Commenters sought clarification as to who would be sufficiently ''independent'' to perform these ''verification and testing'' functions.

While Commenters acknowledge that supervisors lack sufficient independence to verify and test procedures they personally implement, flexibility to accommodate a variety of supervisory structures beyond self-supervision is sought. Commenters contended that senior supervisors in a hierarchal supervisory structure should not be excluded because they may derive an ''indirect benefit'' from the activity under review.

The Exchange recognizes the far-ranging scope and variety of activities subject to the verification and testing requirements. Accordingly, the requirement that internal control procedures be ''separate and apart from the day-to-day supervision of such functions'' has been deleted from the proposed amendments to NYSE Rule 342.23 to allow greater flexibility in establishing such internal controls. However, firms will be expected to make an informed determination that persons responsible for verification and testing of business activities are sufficiently independent and qualified to do so effectively.

Commenters also seek clarification and assurance that the proposed requirements do not create an obligation for firms to annually test and verify ''every aspect'' of their supervisory procedures but rather allow for a ''risk-based approach'' based upon ongoing assessments of the firm's business.

In response, the proposed amendments to NYSE Rule 342.23 have been revised to allow for an ongoing analysis, based upon appropriate criteria, to assess and prioritize those business activities requiring independent verification and testing.

Designated Internal Control Requirements

Proposed NYSE Rule 401(b) (''Business Conduct'') requires that written policies and procedures, administered pursuant to the internal control requirements prescribed under proposed NYSE Rule 343.23, must specifically address transmittals of funds between accounts, changes in investment objectives, and changes of address. These designated policies and procedures must include a means/method of customer confirmation, notification, or follow-up that can be documented.

The SIA has proposed that these requirements should apply only to retail accounts. An ''institutional carve-out'' is sought, given that much of such business is done DVP or through Prime Brokerage accounts.

The Exchange believes that an exemption for institutional accounts is inappropriate. In order for an internal controls policy to be effective, it must be comprehensive. Accordingly, it is reasonable and appropriate that regulatory oversight in the sensitive areas designated in proposed NYSE Rule 401(b) should extend to institutional account activity.

Time and Price Discretion

Proposed amendments to paragraph (d) of NYSE Rule 408 (''Discretionary Power in Customers' Accounts'') require that time and price discretionary authority be limited to the day it is granted, absent written customer authorization to the contrary.

Commenters suggest consideration of an ''institutional exemption'' from the requirement on the basis that requiring such written authorization would be inconvenient and unnecessary for sophisticated institutional clients who do not need the same level of protection as retail clients. Such clients are accustomed to entering orders that are ''worked'' over one or more days on a Good-Till-Cancelled/Not Held basis.

The Exchange believes that a general institutional exemption is inappropriate. However, the amendments have been revised to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders exercised by Floor brokers pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis.

In addition, Commenters seek clarification as to whether the written authorization for the exercise of time and price discretion beyond the business day it was granted need be obtained on an ''order-by-order basis,'' or whether general ''standing instructions'' from the customer are permitted.

The current text of NYSE Rule 408(d) clearly limits the exercise of time and price discretion to ''the purchase or sale of a definite amount of a specified security. * * *.'' Any written authorization granting time and price discretion must comply with this established, trade-specific standard. Customers who wish to grant more extensive discretionary authority to their registered representative may do so pursuant to a fully executed trading authorization.

Maintenance of ''Account Designation Change'' Documentation

The proposed amendments to NYSE Rule 410 (''Records of Orders'') state, in

[10] Telephone conversation between Steve Kasprzak, Attorney, NYSE and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on August 7, 2003.

part, that the ''essential facts relied upon by the person approving an account designation change must be documented in writing and maintained in a central location.''

A.G. Edwards seeks clarification that such documentation be maintained ''in a location where the determination and approval occurs, not in the Home Office'' so as to avoid ''duplicate record.''

The determination of where such documentation should be retained would depend on the supervisory structure of the firm. Typically, the ''central location'' would be where the account designation change was approved. However, the proposed rule amendments should not be construed to be determinative of where such records should be maintained, nor discourage maintenance of records in more than one location if regulatory purposes are well served by doing so.

Accordingly, the requirement that relevant documentation be maintained in ''a central location'' has been deleted and replaced with the requirement that such documentation be maintained for three years, the first two in an ''easily accessible place,'' consistent with the meaning of that term under SEC Rule 17a–4.[11]

Independent Branch Office Inspections

Two related issues have been raised regarding proposed amendments to the Interpretation of NYSE Rule 342 (''Offices—Approval, Supervision, and Control''). The amendments originally required that branch office visits be conducted by a person ''independent of the ongoing supervision, control, or performance evaluation of the branch office (*i.e.*, not the Branch Office Manager, Sales Manager, District/Regional Manager assigned to the office, or any other person performing a similar supervisory function).''

Commenters have raised concerns that the amendments may result in economically burdensome and counter-productive supervisory structures. Also, clarification is sought as to who would be sufficiently ''independent'' to conduct such visits. A more flexible standard is sought that would prohibit supervisors from inspecting their own offices but would allow other supervisory personnel in a hierarchical supervisory system, sufficiently outside of the day-to-day chain of command, to meet the ''independence'' standard.

The Exchange believes that in order for a branch inspection program to be effective, reasonable guidelines must be in place to minimize conflicts of interest. While these guidelines need not exclude all participants at every level of a branch office's hierarchal supervisory structure, the Exchange believes it is reasonable that they exclude the branch manager, any person to whom the branch manager directly reports, and any person who reports to the branch manager. The proposed amendments have been revised accordingly.

Number of Annual Branch Office Inspections

A.G. Edwards raised the concern that the proposed amendments, in conjunction with pending NYSE rule proposals that amend the definition of ''branch office,'' will create a ''huge burden'' with respect to annual inspections for firms with far-reaching branch networks.

The Exchange currently requires, absent a specific waiver, annual inspections of each branch office location.[12] Pending NYSE Rule amendments relating to the definition of a ''branch office''[13] would significantly *reduce* the types of locations required to be registered as branch offices; therefore, the number of branch office inspections required of each member organization would either be reduced or remain the same.

Effective Date

Commenters expressed concern has been raised that the effective date of any new requirements allow adequate time to enable firms to make necessary systems changes in an efficient and cost-effective manner. Accordingly, the Exchange intends to establish an effective date six months from Commission approval of the proposed rule amendments to allow members and member organizations sufficient time to address any necessary procedural or systems changes.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act,[14] which requires, among other things, that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market and, in general, to protect investors and the public interest. The proposed rule amendments are intended to foster the strengthening of NYSE members' and member organizations' internal controls and supervisory systems

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

SR–NYSE–2002–36 and Amendment No. 1 were published in the **Federal Register** on November 20, 2002.[15] Commenters included Cadaret, Grant & Co., A.G. Edwards & Sons, Inc., Charles Schwab & Co., and the SIA. Their comments and the Exchange's response appear above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3, are 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 in

[11] *See* 17 CFR 240.17a–4.

[12] *See* NYSE Rule 342(a)(b)/03 in the *NYSE Interpretation Handbook.*

[13] *See* Securities and Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) SR–NYSE–2002–34.

[14] 15 U.S.C. 78f(b)(5).

[15] *See* note 4, *supra.*

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–36 and be submitted by September 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. 03–20600 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48286; File No. SR–SCCP–2003–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Remote Competing Specialists for Odd-Lot Trades

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 28, 2003, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to reduce the ''SCCP transaction charge (remote competing specialists only)'' as it applies to odd-lot trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends SCCP's schedule of dues, fees, and charges to reduce the amount of the ''SCCP transaction charge (remote competing specialists only)'' as it applies to odd-lot trades from $0.30 to $0.10 per trade side. The SCCP transaction charge applicable to round lot trades will remain at $0.30 per trade side.[3] The combination of these fees remains capped at $100,000 per month.[4]

SCCP states that the purpose of the proposed rule change is to encourage odd-lot business by reducing the SCCP transaction charge as it applies to odd-lot trades. Currently, the ''SCCP transaction charge (remote competing specialists only)'' is $0.30 per trade side capped at $100,000 per month without regard to size or type. This fee reduction is intended to provide an incentive for remote competing specialists to continue to trade odd-lots in addition to their regular businesses. SCCP believes that the proposed fee reduction will encourage these smaller trades as well as regular trades thereby enhancing SCCP's business and liquidity in the marketplace.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[5] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies equally to all SCCP participants with remote competing specialist operations or which clear for remote competing specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b-4(f)(2) thereunder.[7] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2003–03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] For purposes of this fee, an odd-lot is defined as a trade under 100 shares, whereas a round lot is defined as a trade of 100 shares or more and includes partial round lots (for example, 125 shares).

[4] This proposal is scheduled to become effective for transactions clearing on or after April 2, 2003.

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b-4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20545 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48287; File No. SR–SCCP–2003–05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Specialist Volume Level Discounts

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 27, 2003, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends SCCP's fee schedule to allow SCCP participant firms involved in mergers, consolidations, acquisitions or other business combinations (collectively ''business combinations'') to combine their volumes of trades cleared through SCCP margin accounts for purposes of the SCCP specialist volume level discount. The proposal is scheduled to be effective retroactively as of February 1, 2003, with a rebate to be given from that date forward for any firms affected by this proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends SCCP's schedule of dues, fees, and charges to allow participant firms engaged in business combinations to combine their trading volumes for purposes of determining their SCCP specialist volume level discounts. From time to time, participant firms may enter into some form of business combination. Prior to a business combination, each component participant firm may take advantage of the specialist volume level discount, depending on the firm's level of trading activity in its SCCP margin account. Currently, however, when a participant firm is involved in a business combination, the resulting participant firm is penalized because the specialist volume level discount is calculated for each participant firm in such business combination rather than for both firms on a combined basis.

After a business combination, the resulting participant firm may be eligible for a higher specialist volume level discount as a result of the combination of the trading activity of its component firms. This occurs because the resulting firm may have a higher volume of transactions than each component firm and because the discount per side increases as the volume levels increase. To establish parity in these situations, SCCP is proposing that, in the month during which a business combination occurs, the specialist volume level discounts of each participant firm involved in such business combination may be consolidated for purposes of determining the specialist volume level discount of the resulting participant firm.

SCCP participants eligible for the combined discounts will be required to request the combined volume level discounts within 30 days after the issuance of the SCCP invoice for the month in which a business combination occurs. The proposal is scheduled to be effective as of February 1, 2003, with a rebate to be given from February 1, 2003 forward to any firms affected by this proposed fee change.

SCCP believes that the proposed rule change is consistent with 17A(b)(3)(D) of the Act[3] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants because the fee structure proposed herein applies the volume discount applicable to combined firms in an equitable manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder.[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2003–05. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20546 Filed 8–12–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). This notice retitles and updates the function of the Office of the Senior Financial Executive. This notice also divides, retitles and updates the function of the Management Analysis and Audit Program Support Staff. The new material and changes are as follows:

Section S1.10 The Office of the Deputy Commissioner, Finance, Assessment and Management—(Organization)

C. The Immediate Office of the Deputy Commissioner, Finance, Assessment and Management (S1J) which includes:

Retitle 1:

1. ''The SSA Senior Financial Executive (S1J–1).''

to:

1. ''The Employer Wage Reporting and Relations Staff (S1J–1).''

Retitle 2:

2. ''The Management Analysis and Audit Program Support Staff (S1J–3).''

to:

2. ''The Audit Management and Liaison Staff (S1J–3).''

Establish:

3. The Human Resources and Program Management Staff.

Section S1.20 The Office of the Deputy Commissioner, Finance, Assessment and Management—(Functions)

Replace as second sentence of paragraph:

C. ''It reviews and analyzes existing and proposed program and administrative policies and/or issues within SSA.''

Replace in its entirety:

1. The Employer Wage Reporting and Relations Staff (S1J–1) provides advice and guidance to the Deputy Commissioner for Finance, Assessment and Management relating to the development and resolution of national policy issues that impact the overall operation of SSA's AWR processes. The Employer Wage Reporting and Relations Staff directs and manages the Agency's efforts to improve Annual Wage Reporting (AWR) and wage reconciliation including the Agency's Electronic Wage Reporting (EWR) initiative. The Director serves as the principal focal point for senior executives, providing leadership that involves the Department of the Treasury, the Internal Revenue Service and other Federal agency and business community relationships for the purpose of improving the Annual Wage Reporting process and resolving AWR issues.

2. The Audit Management and Liaison Staff (S1J–3) plans and directs SSA's participation in the audit programs conducted by the U.S. Government Accounting Office (GAO), the Office of Inspector General (OIG) and other external organizations. Develops Agency position on issues presented in the audits. Reviews and evaluates audit reports and monitors and evaluates the implementation of GAO and OIG audit reports and internal survey recommendations.

Add:

3. The Human Resources and Program Management Staff provides analytical support for a wide range of Agency-wide and/or Office-wide administrative program activities related to program administration, operations and policy.

Dated: August 6, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–20531 Filed 8–12–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 4441]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Drawings of Françcois Boucher''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Drawings of François Boucher,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Frick Collection, New York, NY from on or about October 8, 2003, until on or about December 14, 2003, and at the Kimbell Art Museum, Fort Worth, TX from on or about January 17, 2004, until on or about April 18, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 5, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–20598 Filed 8–12–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4407]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, September 15–16, 2003, in Conference Room 1205. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) no later than

[6] 17 CFR 200.30–3(a)(12).

August 29, 2003 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Gloria Walker for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, September 15, 2003, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, September 15, 2003, and 9 a.m. until 1 p.m. on Tuesday, September 16, 2003, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub.L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: August 4, 2003.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation Department of State.

[FR Doc. 03–20599 Filed 8–12–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15856]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by October 14, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–03–15856] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

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

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Business Policy Division, M–61, Office of the Senior Procurement Executive, Office of the Secretary, (202) 366–4272. Refer to OMB Control Number 2105–0517

SUPPLEMENTARY INFORMATION:

Title: Transportation Acquisition Regulation 48 CFR Part 12.

OMB Control Number: 2105–0517.

Type of Request: Extension without change, of a previously approved collection.

Abstract: The requested extension of the approved control number covers the information and collection requirements contained in (TAR) 48 CFR Chapter 12 including forms F 4220.4, DOT F 4220.7, DOT F 4220.45, DOT F 4220.46, and Form DD882.

Respondents: Individuals or households and business or others for profit organizations

Estimated Number of Respondents: 11,531

Estimated Total Burden on Respondents: 37,115 hours

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 7, 2003.

David J. Litman,

Senior Procurement Executive.

[FR Doc. 03–20648 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–48]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 2003.

ADDRESSES: Send comments on the petition 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–2003–14587 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb, (425) 227–1134, Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins, (202) 267–8029, 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 August 8, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15705.
Petitioner: Fokker Services B.V.
Section of 14 CFR Affected: 14 CFR 25.562 and 25.785(b).
Description of Relief Sought: Exemption to allow installation of a medical stretcher on two Gulfstream Model G–V airplanes.

[FR Doc. 03–20674 Filed 8–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–47]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 a certain petition seeking relief from a specified requirement of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 2003.

ADDRESSES: Send comments on any petition 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–2003–15272 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 8, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15272.
Petitioner: U.S. Airways, Inc.
Section of 14 CFR Affected: 14 CFR 121.309(b)(4).
Description of Relief Sought: To provide U.S. Airways with temporary relief to allow it time to remove its evacuation slides at their next scheduled maintenance interval and mark the slides with the date of their last inspection as required under the regulation.

[FR Doc. 03–20675 Filed 8–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–46]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 2003.

ADDRESSES: Send comments on the petition 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–2003–15305–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Mullen (816–329–4128), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), 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 August 8, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15305–1.

Petitioner: Explorer Aircraft, Inc.

Section of 14 CFR Affected: 14 CFR part 23, § 23.562.

Description of Relief Sought: Explorer Aircraft, Inc. seeks exemption from 14 CFR 23.562 for the Eagle 150B–23 model. The Eagle 150B–23 meets the requirements for a JAR–VLA class aircraft. The aircraft has a gross weight of 1433 pounds (650 Kgs) and a flaps down stall speed of 45 knots or less. The exemption will permit the Eagle 150B–23 aircraft to receive a normal category Part 23 type certification as required for NVFR operations with the increased level of safety afforded by a Part 23 certified aircraft.

[FR Doc. 03–20676 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–45]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 2, 2003.

ADDRESSES: Send comments on the petition 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–2003–15420 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), 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 August 6, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15420.

Petitioner: EMBRAER Empresa Brasileira de Aeronáutica S/A.

Section of 14 CFR Affected: 14 CFR 25.831(g).

Description of Relief Sought: Exemption of EMBRAER ERJ–170 airplanes from the requirement of 14 CFR 25.831(g) to limit the humidity level of the cabin to a vapor pressure of less than 27 millibars in the event of improbable failure conditions.

[FR Doc. 03–20677 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Yellowstone County, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yellowstone County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Program Development Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602, Telephone: (406) 449–5302, ext. 233; or Fred Bente, Consultant Design, Montana Department of Transportation, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana 59620–1001, Telephone: (406) 444–7634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a bypass route north of Billings in Yellowstone County, Montana. The proposed bypass route would be located north of the Billings Logan International Airport between Interstate 94 (I–94) and Montana Highway 3 (MT 3), a distance of approximately 24 km (15 miles), and would include connections to I–94, Highway 312, US 87, and MT 3.

Improvements to the corridor are considered necessary to improve the Camino-Real International Trade Corridor and alleviate congestion on a number of principal arterial streets in northeast Billings. The bypass could also help to improve air quality in the Billings urban area, which is currently designated as a non-attainment area for carbon monoxide (CO), by reducing stopping and idling times for traffic.

Alternatives under consideration include (1) taking no action; (2) constructing a new bypass route.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. An extensive public involvement process will be conducted to solicit views and comments from the appropriate agencies and interested private organizations and citizens. The process will include a Billings Bypass Advisory Committee,

public meetings & workshops, a public hearing, and presentations & meetings with community interest groups. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting date has been set at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 5, 2003.

Dale W. Paulson,

Program Development Engineer, Federal Highway Administration, Montana Division, Helena, Montana.

[FR Doc. 03–20540 Filed 8–12–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the Monthly Report—Tobacco Products Importer.

DATES: Written comments should be received on or before October 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sandra Turner, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Monthly Report—Tobacco Products Importer.

OMB Number: 1513–0107.

Form Number: TTB F 5220.6.

Abstract: Reports of the lawful importation and disposition of tobacco products dealers are necessary to determine whether those issued the permits required by 26 U.S.C. Section 5713 should be allowed to renew their operations or renew their permits.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden Hours: 14,400.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 7, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–20590 Filed 8–12–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service Performance Review Board.

DATES: This notice is effective on August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC 20227; telephone (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the Financial Management Service (FMS) Performance Review Board (PRB). This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Kenneth R. Papaj, Deputy Commissioner,
Nancy C. Fleetwood, Assistant Commissioner, Information Resources,
J. Martin Mills, Assistant Commissioner, Debt Management Service,
Bettsy H. Lane, Assistant Commissioner, Federal Finance,
Anthony R. Torrice, Assistant Commissioner, Regional Operations.

Alternate Members

D. James Sturgill, Assistant Commissioner, Governmentwide Accounting,
Judith R. Tillman, Assistant Commissioner, Financial Operations,
Scott H. Johnson, Assistant Commissioner, Management (Chief Financial Officer),
Kerry Lanham, Assistant Commissioner, Treasury Agency Services.

Dated: August 5, 2003.

Kenneth R. Papaj,

Deputy Commissioner.

[FR Doc. 03–20534 Filed 8–12–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106511–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106511–00, Estate Tax Returns; Form 706, Extension to File (20.6081–1(b)).

DATES: Written comments should be received on or before October 14, 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 regulations 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: Estate Tax Returns; Form 706, Extension to File.

OMB Number: 1545–1707.

Regulation Project Number: REG–106511–00.

Abstract: Section 6075(a) of the Internal Revenue Code (the Code) requires the executor of a decedent's estate to file the Federal estate tax return (Form 706, ''United States Estate (and Generation-Skipping Transfer) Tax Return'') within 9 months after the date of the decedent's death. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return; however, except in the case of executors who are abroad, no such extension may be for more than 6 months. Executors currently request an extension of time to file Form 706 by filing Form 4768, ''Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.'' The regulation grants executors of decedents' estates an automatic 6-month extension of time to file the Form 706 and requires that executors continue to file Form 4768 to receive the automatic extension.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual.

The reporting burden contained in section 20.6081–1(b) is reflected in the burden of Form 4768, ''Application for Extension of Time To File a Return and/or Pay U. S. Estate (and Generation-Skipping Transfer) Taxes.''

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: August 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20667 Filed 8–12–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
August 13, 2003

Part II

Federal Communications Commission

47 CFR Part 1
Assessment and Collection of Regulatory Fees for Fiscal Year 2003; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 03–83; FCC 03–184]

Assessment and Collection of Regulatory Fees For Fiscal Year 2003

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2003. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Effective September 11, 2003.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: July 21, 2003.

Released: July 25, 2003.

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

TABLE OF CONTENTS

Topic	Paragraph
I. Introduction	1
II. Discussion	
A. Development of FY 2003 Fees	
i. Calculation of Revenue Requirements	2
ii. Further Adjustments to Payment Units	3
iii. Classification of LMDS	6
iv. Adjustment of Fee Waiver Policies	11
v. Procedural Changes and Future Streamlining of the Regulatory Fee Assessment and Collection Process	15
vi. Commercial Mobile Radio Service (CMRS) Messaging	20
vii. Broadcast Television Stations with Single Channel Allotments	23
viii. Amateur Radio Vanity Call Signs	26
B. Procedures for Payment of Regulatory Fees	
i. De minimis Fee Payment Liability	31
ii. Standard Fee Calculations and Payment Dates	32
C. Enforcement	34
III. Procedural Matters	35
Attachment A—Final Regulatory Flexibility Analysis	
Attachment B—Sources of Payment Unit Estimates for FY 2003	
Attachment C—Calculation of Revenue Requirements and Pro-Rata Fees	
Attachment D—FY 2003 Schedule of Regulatory Fees	
Attachment E—Factors, Measurements, and Calculations that Determine Station Contours and Population Coverages	
Attachment F—Parties Filing Comments and Reply Comments	

I. Introduction

1. In this *Report and Order (''R&O'')*, the Commission concludes a proceeding to collect $269,000,000 in regulatory fees for Fiscal Year (FY) 2003. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY 2003 Fees

i. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2003, this allocation was done using FY 2002 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 23 percent to reflect the increase in regulatory fees from FY 2002 to FY 2003. These FY 2003 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159 (b) (2).

ii. Further Adjustments to Payment Units

3. In calculating the FY 2003 regulatory fees for each service in Attachment D, the Commission adjusted the FY 2002 list of payment units (Attachment B) based upon licensee data bases and industry and trade group projections. Whenever possible, the Commission verified these estimates from multiple sources to ensure accuracy of these estimates.

4. The *R&O* also adjusts the payment units for FY 2003 by expanding the AM and FM Radio Station Regulatory Fees Grid. Since FY 1998, the Commission has used a grid that divides broadcast station regulatory fees by class of service, population, and type of service (AM/FM).[4] This grid was originally

[1] *See* 47 U.S.C. 159(a).

[2] The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 23 percent in FY 2003 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 23 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact on the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* Report and Order, 63 FR 35847, July 1, 1998, paragraph 37.

adopted to provide equity and fairness among radio stations with varying signal strengths and market reach. However, in recent years, modifications to radio stations, a trend toward more powerful stations, and increases in the overall general population have resulted in an ever-increasing number of stations grouped in the one million-plus category of the grid. This trend necessitated the need to review the grid. In its *Fiscal Year 2003 Regulatory Fee Notice of Proposed Rulemaking (''NPRM''),* adopted March 24, 2003 (68 FR 17577, April 10, 2003), the Commission proposed to revise the grid to include a population category of ''greater than three million people'' and to change the population threshold amounts to reflect slightly wider population fields.

5. The Commission received no comments concerning this matter. Therefore, beginning in Fiscal Year 2003 we will use the revised grid, as proposed in the NPRM, to assess regulatory fees for AM and FM commercial radio stations. The current and revised radio station grids follow:

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FY 2002 RADIO STATION REGULATORY FEE GRID (Six by Six)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000						
20,001 - 50,000						
50,001 - 125,000						
125,001 - 400,000						
400,001 - 1,000,000						
>1,000,000						

REVISED RADIO STATION REGULATORY FEE GRID (Six by Seven)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000						
25,001 - 75,000						
75,001 - 150,000						
150,001 - 500,000						
500,001 - 1,200,000						
1,200,001 – 3,000,000						
> 3,000,000						

BILLING CODE 6712–03–C

iii. Classification of LMDS

6. In our *NPRM*, we sought comment on how to classify Local Multipoint Distribution Service (''LMDS'') for regulatory fees purposes, which since FY 2000 has been classified in the fee category of Multipoint Distribution Service (''MDS''). We received several comments from respondents suggesting that the LMDS fee category be reclassified in the microwave category. For example, Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'') argue that LMDS and the microwave fee category are regulated similarly, and therefore should be classified together. LMDS is regulated in part 101 of the Commission's rules as is the microwave category, whereas MDS is regulated under part 21. LMDS operates in the 28 GHz and 31 GHz bands and is most similar to the ''upper band'' of microwave services category. BMDDP argues that both the microwave and LMDS services have similar propagation limitations, and each of these services compete (or could compete) for the same subscriber base within the same geographic market area.[5]

7. In their comments, Bennet & Bennet also argue that LMDS should be classified in the microwave category, noting that the present classification of LMDS with MDS places LMDS at a competitive disadvantage without any rational basis.[6] Bennet & Bennet argue that by the Commission's own admission in its *Fixed Wireless Report*, it recognizes that the lower (MDS) and upper (LMDS, microwave) band services have significantly different propagation characteristics and generally serve two distinct markets.[7] As a result, Bennet & Bennet conclude that although LMDS and MDS share some similarities, these two fee categories are regulated under different rules, utilize different network equipment configurations, and serve different markets.[8]

8. The Commission received a reply comment that addressed the distinctions between MDS and LMDS. The Martin Group, on behalf of its Local Multipoint Distribution Service clients, concurs with the arguments raised by respondents Bennet & Bennet, and BMDDP that LMDS should be reclassified in the microwave fee category. The Martin Group also notes that MDS and LMDS are not similar in technologies or usage.[9] While LMDS and MDS share the same ''Multipoint Distribution Service'' designation, the technologies involved are radically different—MDS systems, for the most part, use one-way multichannel video systems, while LMDS systems deliver megabytes of data to customers. The Martin Group is not aware of any point-to-point applications of MDS equipment, but point-to-point systems have been successfully deployed using the LMDS spectrum in a manner operationally similar to microwave technology.[10]

9. The three commenters on this issue have raised substantive arguments addressing the technological characteristics of MDS, LMDS, and the microwave fee category. Based on these distinctions, the respondents advocate that LMDS be reclassified as a microwave service for regulatory fee purposes. From the comments we have received, we concur that substantive distinctions exist between MDS and LMDS and that they should not be placed in the same fee category. However, we are unpersuaded that LMDS should be moved to the microwave service category. Recent technological and commercial applications using LMDS service indicate that this service may develop on a separate track from current microwave services. LMDS offers significant potential in offering a broad range of one-way and two-way voice, video, and data service capability, and substantially more capacity than other wireless services. We conclude that the best resolution at this time is to move LMDS administratively into a separate fee category, while maintaining its current fee structure, and initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services. All other rules and regulations governing LMDS at this time will continue to apply.

10. We note that although we have separated MDS and LMDS into separate fee categories, the regulatory fee amounts for both services this fiscal year will be $265 per license. This is a reduction of more than 38 percent from last year's fee and is a significantly reduced financial obligation for LMDS licensees.[11]

iv. Adjustment of Fee Waiver Policies

11. In our NPRM, we addressed the policies applicable to granting fee waivers based on financial hardship.[12] We emphasized that under existing policy, although evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases. We also sought comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy and otherwise. We tentatively proposed a cap of either $500,000 or $1 million on the amount of fees that would be waived for a single entity and its affiliates.

12. Only one commenter, the Verizon telephone companies (Verizon),[13] responded to this proposal. Verizon asserts that the Commission should not grant fee waivers based on bankruptcy. According to Verizon, doing so unfairly shifts the cost of the bankrupt's failure to the Commission and to the bankrupt's competitors, who will have to pay higher fees and suffer competitive disadvantage. Verizon maintains that granting waivers to bankrupts may significantly reduce the revenues from fees. In this regard, Verizon estimates that the current upsurge in bankruptcies may affect companies accounting for up to 20 percent of revenues from large telecommunications firms and 30 percent of large interexchange carriers. Moreover, Verizon observes that companies in bankruptcy may nevertheless have sufficient funds to pay regulatory fees and that especially companies undergoing Chapter 11 reorganization should be expected to pay applicable fees on a going-forward basis.[14] In Verizon's view, the bankrupt entity's liability for regulatory fees should be left to bankruptcy law, which will set the priority of the fees relative to other obligations and discount the bankrupt's liability as appropriate.[15] Verizon agrees with our proposal to cap all other fee waivers at $500,000 to $1 million.

13. Although we share Verizon's concern over the impact that bankruptcies may have on our ability to collect fees, we find that Verizon's proposals go too far. We continue to

[5] Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pages 1–2.

[6] Comments of Bennet & Bennet, PLC on behalf of its LMDS clients, page 1.

[7] Ibid., page 2.

[8] Ibid., pages 2, 4, and 5.

[9] Comments of Martin Group on behalf of its LMDS clients, page 2.

[10] Ibid., pages 2 and 3.

[11] The regulatory fee amount for the MDS/LMDS service category was $450 per license held in FY 2001, and $430 per license held in FY 2002.

[12] *Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraphs 10–12.

[13] The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications, Inc.

[14] *See* 11 U.S.C. 503, 507(a)(1) (allowance of debtor's administrative expenses).

[15] *See* 11 U.S.C. 507, 726 (regarding priorities).

believe that in appropriate circumstances the public is served by assisting financially distressed telecommunications companies, especially small entities, by granting them relief or partial relief from Section 8 and Section 9 fees, and thereby assisting them in remaining effective competitors in the telecommunications marketplace. We also believe that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver. Our concerns in this regard are distinct from those taken into account by a bankruptcy court in setting the respective priorities of various types of obligations and discounting them where appropriate.[16] Bankruptcy law does not limit our ability to forego collecting fees [17] where the public interest warrants, and we therefore act independently of the bankruptcy law to this extent. On the other hand, we continue to believe that very large waivers would excessively impair our ability to comply with our statutory fee collection responsibilities. Even under existing policy, we might decline a request for such a waiver on a case-by-case basis.

14. Additionally, we believe that a cap on waivers would be a useful means of implementing our policy concerns.[18] We adopt a cap of $500,000 applicable both to bankrupt and other regulates asserting financial hardship, and we will amend the rules accordingly. We believe that granting fee waivers of greater than this amount would tend to have a negative impact on our ability to meet our statutory responsibilities. Fees owed above the cap would be subject to the provisions of the Bankruptcy Act in cases of bankruptcy. In other cases of asserted financial hardship, we may consider waiver, partial waiver, or deferral of fees above the cap on a case-by-case basis. As noted in the *NPRM*, in computing the cap we will aggregate all subsidiaries and other affiliated entities of a particular regulatee. Additionally, in computing the cap we will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date. The cap will apply to all waiver requests pending as of the effective date of the new rule. Adoption of the fee waiver cap does not limit our ability to grant or deny any current pending waiver requests. We anticipate that we will revisit the amount of the cap in subsequent fee rulemakings as warranted by changing conditions. We may also give further consideration to Verizon's proposals if our further experience suggests that this would be desirable.

v. Procedural Changes and Future Streamlining of the Regulatory Fee Assessment and Collection Process

15. In our *NPRM*, we sought comment on a broad range of options for streamlining and otherwise improving the Commission's fee assessment and collection processes and procedures.[19] While no comments were received with specific regards to future streamlining efforts, the Industrial Telecommunications Association, Inc. (''ITA'') objects to the Commission's proposal to discontinue its annual mailing of regulatory fee public notices to licensees. ITA states that small wireless and radio services providers, without adequate notification, may unintentionally miss the deadline for payment of fees.[20] In his reply comment, Kenneth J. Brown, a retired broadcast engineer, contends that the annual mailing of regulatory fee public notices is a waste of federal resources with regard to large radio station group owners.[21] Mr. Brown asserts that his former employer was able to obtain the public notice and payment information from the Commission's Internet site each year, long before public notice mailings for each of the employer's holdings arrived in the mail.[22]

16. In responding to ITA, we first note that the Commission's smallest regulatory fees—generally paid by smaller businesses and entities—are attached to Section 8 application fees and are paid upfront by entities at the time of their initial application or renewal of their multi-year license. Also, because governmental and public safety entities are exempt from regulatory fees, it is not necessary to give notice to these entities. In addition, each year the Regulatory Fee Schedule is established in a *R&O* promulgated by the Commission. This *R&O*, along with our regulatory fee public notices, are published in the **Federal Register** as a means of providing official public notice.[23]

17. As in previous years, we will also continue to make our regulatory fee public notices available on the FCC's Web site (*http://www.fcc.gov/fees*). In our *NPRM*, we proposed no longer to disseminate public notices through surface mail because of the wide availability of the Internet.[24] We believe that today use of the Internet among the vast majority of businesses is ubiquitous and even those entities without computers or Internet access on their premises can still obtain the public notices via Internet access at their local public library. The Internet serves as the most convenient source for licensees to obtain regulatory fee information.

18. We also note that our initiative to mail regulatory fee assessment postcards to media services entities is underway, and that if this pilot program is successful we will consider expanding this method to other services.[25] We iterate that our broader interest is to move towards disseminating actual regulatory fee bills to entities. To do so, we may consider various methods in the future, including ''e-billing'' through the Internet.

19. For the reasons stated above, the Commission adopts its proposal no longer to disseminate regulatory fee public notices to the majority of its regulatees. An exception to this policy will be made for Interstate Telecommunication Service Providers (''ITSPs''), as the Commission will continue to generate and mail to them a customized Regulatory Fee Worksheet attached to the general regulatory fee public notice.

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[16] Verizon notes that in our NPRM we stated with respect to fees in excess of the proposed cap: ''By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving due regard to our congressionally-mandated obligation to collect regulatory fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act.'' Verizon contends that we should treat all fees from companies in bankruptcy consistent with this approach. We believe, however, that smaller fees warrant a different public interest balancing than larger fees and that we should continue to grant waivers for smaller amounts.

[17] *See* 11 U.S.C. 501, 502(a), 726 (claims have priority only upon creditor's timely filing of a proof of claim).

[18] The fee waiver cap we adopt is intended to limit the circumstances in which financial hardship will be considered as a basis for granting a fee waiver. It does not affect the procedures for processing waiver requests.

[19] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 16.

[20] Comments of the Industrial Telecommunications Association, Inc., page 4.

[21] Reply Comments of Kenneth J. Brown, page 1.

[22] Reply Comments of Kenneth J. Brown, page 1.

[23] Moreover, we will continue to mail public notices and other relevant materials free of charge to entities upon request.

[24] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, *Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 13.

[25] For FY 2003, assessment postcards will be mailed to all media services entities (radio and television station licensees) with the exception of broadcast auxiliary station licensees. Entities receiving assessments will continue to pay their regulatory fees via the Commission's established procedures; i.e., payments must still be accompanied by FCC Form 159 and be submitted via the Commission's traditional methods for collection of regulatory fees each year.

vi. Commercial Mobile Radio Service (CMRS) Messaging

20. Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P. (''Joint Commenters''), as joint commenters, urge the Commission to reduce the regulatory fee amount per subscriber, contending that because the messaging industry is not expanding, the Commission is probably expending fewer resources in the messaging industry than in other wireless services.[26] Joint Commenters note that the Commission is required to relate its regulatory fee assessments to the cost of regulating each industry segment. American Mobile Telecommunications Association, Inc. (''AMTA'' or ''Association'') also argues that a declining CMRS messaging services base should result in a decrease in the cost of regulation, and adds that spectrum-limited and geographically localized services such as CMRS messaging are very fee sensitive and therefore not able to pass on increases in costs very easily.[27] In their reply comments, Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDD&P'') concurs that over the past several years, the Commission's level of regulatory and enforcement activity has probably decreased, and as a result, there should be a corresponding decrease in regulatory fees.[28] Finally, the Industrial Telecommunications Association, Inc. (''ITA'') asks whether small SMR operators are still categorized in the CMRS Messaging Service fee category.[29]

21. First, we confirm that with respect to SMR operators under the 10 MHz bandwidth, the Commission continues to classify these operators as part of the CMRS Messaging fee category. Turning to the issue pertaining to the CMRS fee, a cogent argument has been presented that there has been a significant decline in CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent. Commenters have persuasively argued that this decline in subscribership may not be just a temporary phenomenon, but a more long-lasting one, and because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is very difficult for this industry to pass on increases in costs to its subscribers.[30] In these unique circumstances, we believe it is appropriate to provide a measure of relief.[31]

22. For the reasons stated above, we will not increase the regulatory fee of CMRS messaging services to $0.11, but will maintain it at its FY 2002 level of $.08 per subscriber unit.

vii. Broadcast Television Stations With Single Channel Allotments

23. Sky Television, L.L.C. (''WSKY–TV'') urges the Commission to create an additional regulatory fee service category for single-channel National Television System Committee (NTSC) full-service broadcast television stations and to assess a fee for this category that is 50 percent of the fee assessed against stations that have paired NTSC/DTV allotments. WSKY–TV states that because much of the Commission's current regulatory activities concerning the broadcast industry benefits only television stations with paired NTSC/DTV allotments, the costs of these activities should not be allocated to single-channel NTSC stations.

24. For background, WSKY–TV is a relatively new broadcast station, having been licensed by the Commission on December 26, 2001 to operate on a single NTSC channel. This license condition is congruent with Commission policy in that initial DTV licenses were limited to full service broadcast television station permittees and licensees as of April 3, 1997,[32] and that new NTSC permittees are not to be awarded a second channel to convert to DTV, but may convert to DTV on their single 6 MHz channel.[33]

25. The Commission's broadcast television regulatory fees are already designed to only capture the costs of analog broadcast activities. Although DTV licensees are subject to Section 8 application fees, the Commission does not yet assess Section 9 regulatory fees to recover the costs of the agency's DTV-related activities. Therefore, there is no need for the Commission to take action on this matter, because the analog-only regulatory fee category that WSKY–TV requests is already in effect.

viii. Amateur Radio Vanity Call Signs

26. Several amateur radio licensees commented concerning the Commission's practice of assessing regulatory fees for amateur vanity call signs. Some commenters assert that no regulatory fees should be assessed for vanity call signs. Other commenters support the payment of a regulatory fee for the administrative costs incurred by the Commission when it initially issues a vanity call sign, but question why a regulatory fee is assessed when renewing the amateur vanity call sign. Of these commenters, some assert that the fee assessed for vanity call signs at the license renewal process should simply be eliminated; others propose that the fee should be eliminated and offset by a higher upfront fee assessed at the time of initial application. Finally, Keven Hemsley states that in instances where the Commission denies an applicant's request for a vanity call sign, the Commission should refund the money automatically rather than requiring the applicant to request a refund.[34]

27. First, we address the issue of requests for refunds of regulatory fees. Our rules state that the Commission will not process refunds of regulatory fees without a written request from the applicant, permittee, licensee or agent in question.[35] We uphold the requirement for a written request for a refund of regulatory fees. The written request serves as documentation when cross-referencing each unique file number that may be entitled to a refund. This documentation is essential for all applications, and particularly so for amateur radio vanity call sign applications, because filing trends indicate that some applicants file several vanity call sign applications per day, for several days on end. When one particular vanity call sign is granted to a filer, all of that filer's other applications are thereby dismissed. Certifying which fees are to be refunded for which dismissed applications would be much more labor intensive without the aid of any refund request documentation from prospective payees—thereby increasing the

[26] Comments provided by Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P., pages 4–6.

[27] Comments by the American Mobile Telecommunications Association, Inc., pages 2 and 5.

[28] Comments by Blooston, Mordkofsky, Dickens, Duffy & Prendergast, page 4.

[29] Comments by the Industrial Telecommunications Association, Inc., page 4.

[30] Comments from American Mobile Telecommunications Association, Inc., pages 2 and 5; comments from Arch Wireless Operating Company, Inc., Allied National Paging Association, American Association of Paging Carriers, Metrocall Holdings, Inc., and WebLink Wireless I, L.P. (collectively known as, ''Joint Commenters''), page 6.

[31] The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process.

[32] *Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12816 (1997).

[33] *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6865 (1998).

[34] Comments of Kevin Hemsley, page 1.

[35] *See* 47 CFR 1.1160(d) Refunds of regulatory fees.

Commission's costs in this service category and leading to higher regulatory fees here, as well. More importantly, the many processors of the myriad applications and filings submitted to the Commission's various Bureaus and Offices are not granted the authority to issue refunds without proper documentation. We cannot relax this filing requirement because maintaining a file of written requests for refunds that are paid to applicants is a sound accounting practice, and is necessary to ensure the integrity of the Commission's financial management and accounting systems.

28. Next, we address comments concerning our general regulatory fee assessment policy with regards to amateur radio vanity call signs. Pursuant to Section 9 of the Telecommunications Act of 1934, as amended, the assessment of regulatory fees is not applicable to amateur radio operator licenses.[36] This exemption applies only to the actual license to operate, and does not extend to the vanity call sign component of Amateur Radio Service. Vanity call signs are voluntarily requested by licensees, and an entity that operates under a vanity call sign enjoys a value-added benefit not afforded to all licensees. Therefore, it is reasonable to conclude that those entities holding amateur vanity call signs should be assessed regulatory fees by the Commission to cover its processing and enforcement costs for making the vanity call sign service available.

29. Rather than assess entities a significant up-front vanity call sign fee that lasts the life of the call sign, the Commission chose instead to assess a nominal fee at the time of initial application and a continuance of the nominal fee at subsequent ten-year vanity call sign and license renewals. The Commission believes that this approach allows greater consumer access to vanity call signs. A high one-time-only fee would be cost prohibitive for many entities wishing to obtain a vanity call sign. This approach is also consistent with the fact that the Commission incurs costs in managing each vanity call sign throughout its existence, not merely the first 10 years of its initial license period. This approach also makes the cost of holding any given vanity call sign equitable among all holders throughout the existence of each call sign, providing by example that holding a vanity call sign for 30 years will cost three times the amount to hold such a call sign for 10 years.[37]

30. For the reasons detailed above, the Commission upholds its fee assessment policy for amateur radio vanity call signs and the payment methodology employed throughout the life-cycle of a vanity call sign authorization.

B. Procedures for Payment of Regulatory Fees

i. *De minimis* Fee Payment Liability

31. Regulatees whose *total* regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 are exempt from payment of regulatory fees in FY 2003.

ii. Standard Fee Calculations and Payment Dates

32. As in prior years, the responsibility for payment of fees by service category is as follows:

(a) Media services—fees must be paid for any license or permit issued on or before October 1, 2002. However, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) Wireline (Common Carrier) and Cable Services (fees are not based on a subscriber, unit, or circuit count)—fees must be paid for any authorization issued on or before October 1, 2002. However, where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) Cable Subscriber Services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count)—the number of subscribers, units or circuits on December 31, 2002 will be used as the basis from which to calculate the fee payment.[38] For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2002. Also, as stated previously, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

33. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159–C's use the electronic fee filer program when sending in their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

C. Enforcement

34. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). The Commission also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.[39]

III. Procedural Matters

35. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[40] It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 11, 2003, which is no less than 30 days after publication in

[36] *See* 47 U.S.C. 149(h).

[37] Assuming a consistent time-value of money, and barring future Congressionally mandated changes in the amount of regulatory fees to be collected.

[38] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 2002, rather than on a count as of December 31, 2002.

[39] *See* 47 CFR 1.1164.

[40] *See* 47 U.S.C. 154(i)–(j), 159, and 303(r).

the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Commission's Consumer And Governmental Affairs Bureau, Reference Information Center, send this to the Chief Counsel for Advocacy of the Small Business Administration (SBA). Finally, it is ordered that this proceeding is terminated.

36. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

Federal Communications Commission.

Willaim F. Caton,

Deputy Secretary.

Attachment A.—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[41] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules and incorporated it into the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003.*[42] Written public comments were sought on the FY 2003 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[43]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $269,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. None.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[44] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[45] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[46] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[47] Nationwide, there are approximately 22.4 million small businesses.[48] In addition, a small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[49] Nationwide, as of 1992, there were approximately 275,801 small organizations.[50] The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[51] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[52] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Cable Services or Systems

5. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually.[53] This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue.[54] We address below each service individually to provide a more precise estimate of small entities.

6. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[55] We last estimated that there were 1,439 cable operators that qualified as small cable companies.[56] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by our action.

7. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[57] The Commission has determined that there are 67,500,000 subscribers in the United States. Therefore, an operator serving fewer than 675,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[58] Based on available data, we find that the number of cable operators serving 675,000 subscribers or less totals approximately 1,450.[59] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other

[41] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[42] 68 FR 17577, April 10, 2003.

[43] 43 *See* 5 U.S.C. 604.

[44] 5 U.S.C. 603(b)(3).

[45] 5 U.S.C. 601(6).

[46] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[47] Small Business Act, 15 U.S.C. 632 (1996).

[48] *See* SBA, *Programs and Services,* SBA pamphlet no. CO–0028, at page 40 (July 2002).

[49] 5 U.S.C. 601(4).

[50] U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[51] 5 U.S.C. 601(5).

[52] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[53] 13 CFR 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

[54] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series—Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of $10 million was used to estimate the number of small business firms because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[55] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

[56] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[57] 47 U.S.C. 543(m)(2).

[58] 47 CFR 76.1403(b).

[59] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

program distribution services.[60] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[61] There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.[62] The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

9. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services.[63] This definition provides that a small entity is one with $12.5 million or less in annual receipts.[64] The market for HSD service is difficult to quantify.[65] Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[66] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[67]

10. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts.[68] Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.[69] Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.[70] The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

11. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services,[71] OVS falls within the SBA-recognized definition of cable and other program distribution services.[72] This definition provides that a small entity is one with $ 12.5 million or less in annual receipts.[73] The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment[74] as well as radio and television broadcasting and wireless communications equipment.[75] These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[76] Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.[77] The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.[78] Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[79] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Wireline Competition Services and Related Entities

13. In this section, we further describe and estimate the number of small entity licensees

[60] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[61] Id.

[62] Id.

[63] 63 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[64] Id.

[65] See, however, the census data for Cable and Other Program Distribution, supra.

[66] Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 12 FCC Rcd 4358, 4385 (1996) (''Third Annual Report'').

[67] Id. at 4385.

[68] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[69] *See Third Annual Report,* 12 FCC Rcd at 4403–4.

[70] *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* 17 FCC Rcd 1244, 1281 (2001) (''Eighth Annual Report'').

[71] *See* 47 U.S.C. 573.

[72] 13 CFR 121.201, NAICS code 517510 (formerly 513220).

[73] Id.

[74] 13 CFR 121.201, NAICS code 334310.

[75] 13 CFR 121.201, NAICS code 334220.

[76] 13 CFR 121.201, NAICS code 334310.

[77] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[78] 13 CFR 121.201, NAICS code 334220.

[79] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

and regulatees that may be affected by rules adopted herein. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report.[80] The SBA has developed small business size standards for wireline and wireless small businesses with three commercial census categories of Wired Telecommunications Carriers,[81] Paging,[82] and Cellular and Other Wireless Telecommunications.[83] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimate numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [84] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[85] We have therefore included small incumbent LECs in this present RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

15. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[86] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[87] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[88] Thus, under this size standard, the majority of firms can be considered small.

16. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services.[90] Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees.[91] Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

17. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[92] According to Commission data,[93] 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees.[94] In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees.[95] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

18. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[96] According to Commission data, 134 companies reported that they were engaged in the provision of local resale services.[97] Of these 134 companies, an estimated 131 they have 1,500 or fewer employees and three, alone or in combination with affiliates, have more than 1,500 employees.[98] Consequently, the Commission estimates that there are 131 or fewer local resellers that are small entities that may be affected by the rules and policies proposed herein.

19. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[99] According to Commission data, 576 companies reported that they were engaged in the provision of toll resale services.[100] Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38, alone or in combination with affiliates, have more than 1,500 employees.[101] Consequently, the Commission estimates that there are 538 or fewer toll resellers that are small entities that may be affected by the rules and policies proposed herein.

20. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[102] According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of interexchange services.[103] Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees.[104] Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

21. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[105] According to Commission data, 936 companies reported that they were engaged in the provision of payphone services.[106] Of these 936 payphone service providers, an estimated 933 have 1,500 or fewer employees

[80] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3 (May 2002) (hereinafter Telephone Trends Report).

[81] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October of 2002).

[82] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[83] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[84] 5 U.S.C. 601(3).

[85] See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b).

[86] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October 2002).

[87] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000).

[88] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[89] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[90] Telephone Trends Report at Table 5.3.

[91] Id.

[92] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[93] Telephone Trends Report at Table 5.3.

[94] Id.

[95] Id.

[96] 96 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[97] Telephone Trends Report at Table 5.3.

[98] Id.

[99] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[100] Telephone Trends Report at Table 5.3.

[101] 101 Id.

[102] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[103] Telephone Trends Report at Table 5.3.

[104] Id.

[105] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[106] Telephone Trends Report at Table 5.3.

and three have more than 1,500 employees.[107] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

22. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[108] According to Commission data, 22 companies reported that they were engaged in the provision of operator services.[109] Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees.[110] Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

23. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[111] According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards.[112] Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one had more than 1,500 employees.[113] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

24. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.[114] According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services.[115] Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and 6, alone or in combination with affiliates, have more than 1,500 employees.[116] Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

25. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[117] According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of ''Other Toll Services.'' [118] Of these 42 companies, an estimated 37 have 1,500 or fewer employees and 5 have more than 1,500 employees.[119] Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

International Services

26. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[120] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[121] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[122] The Census report does not provide more precise data.

27. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

28. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

29. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

30. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 3,149 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

31. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

32. *Mobile Satellite Earth Stations.* There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

33. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

34. *Space Stations (Geostationary).* There are presently an estimated 75 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

35. *Space Stations (Non-Geostationary).* There are presently seven Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

36. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.''[123] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[124] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

[107] Id.

[108] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[109] Telephone Trends Report at Table 5.3.

[110] Id.

[111] 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002).

[112] Telephone Trends Report at Table 5.3.

[113] Id.

[114] 13 CFR 121.201, NAICS code 513340 (changed to 517410 in October of 2002).

[115] Telephone Trends Report at Table 5.3.

[116] Id.

[117] 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002).

[118] Telephone Trends Report at Table 5.3.

[119] Id.

[120] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[121] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[122] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[123] 13 CFR 121.201, NAICS codes 51321 and 51322.

[124] Id.

Media Services

37. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[125] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.''[126] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[127] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[128] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

38. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

39. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[129] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[130] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations[131] are included.[132] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

40. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[133]

41. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[134]

Wireless and Commercial Mobile Services

42. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[135] or Cellular and Other Wireless Telecommunications.[136] Under both of those SBA size standards, such a business is small if it has 1,500 or fewer employees.[137] For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[138] Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[139] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[140] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[141] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

43. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[142] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[143] These

[125] *See* OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

[126] OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See id.* at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[127] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[128] FCC News Release, ''Broadcast Station Totals as of September 30, 2002.''

[129] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

[130] *Id.*

[131] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[132] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[133] 13 CFR 121.201, NAICS codes 513111 and 513112.

[134] 15 U.S.C. 632.

[135] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October of 2002).

[136] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[137] *Id.*

[138] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513321 (issued Oct. 2000).

[139] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[140] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[141] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[142] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824 paragraphs 57–60 (1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

[143] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive

Continued

standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[144] No small businesses within the SBA-approved small business size standard bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[145] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

44. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[146] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[147] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

45. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This standard provides that such a company is small if it employs no more than 1,500 persons.[148] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[149] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[150] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[151] This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[152] A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[153] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[154] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[155]

47. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[156] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning

Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 11 FCC Rcd 7824 paragraphs 57–60 (1996), 61 FR 33859 (July 1, 1996).

[144] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 paragraphs 115–17 (1994), 59 FR 37566 (July 22, 1994).

[145] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, Second Report and Order, 12 FCC Rcd 16436 (1997), 62 FR 55348 (Oct. 24, 1997).

[146] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC RCD 10456 (2000), 65 FR 35875 (June 6, 2000).

[147] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[148] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[149] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[150] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[151] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[152] *Id.,* 12 FCC Rcd 10943, 11068–70, at paras. 291.

[153] *See* letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[154] *See* generally Public Notice, ''220 MHz Service Auction Closes,'' 14 FCC Rcd 605 (1998).

[155] Public Notice, ''Phase II 220 MHz Service Spectrum Auction Closes,'' 14 FCC Rcd 11218 (1999).

[156] 47 CFR 90.814(b)(1).

bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted.

48. *Common Carrier Paging.* In the Paging Third Report and Order, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[157] A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[158] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.[159] Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.[160]

49. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[161] A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[162] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[163]

50. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small entities specific to the Rural Radiotelephone Service.[164] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[165] The Commission uses the SBA's size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[166] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

51. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[167] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[168] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

52. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[169] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[170] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

53. *Fixed Microwave Services.* Microwave services include common carrier,[171] private-operational fixed,[172] and broadcast auxiliary radio services.[173] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[174] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to

[157] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997), 62 FR 16004 (Apr. 3, 1997).

[158] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paras. 98 (1999), 64 FR 33762 (June 24, 1999).

[159] Trends in Telephone Service at Table 5.3.

[160] *Id.* The SBA size standard is that of Paging, 13 CFR 121.201, NAICS code 517211.

[161] *See* Service Rules for the 746–764 MHz Bands, and Revisions to part 27 of the Commission's Rules, WT Docket No. 99–168, Second Report and Order, 15 FCC Rcd 5299 (2000), 65 FR 17599 (Apr. 4, 2000).

[162] *See* generally Public Notice, ''220 MHz Service Auction Closes,'' Report No. WT 98–36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

[163] Public Notice, ''700 MHz Guard Band Auction Closes,'' DA 01–478 (rel. Feb. 22, 2001).

[164] The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

[165] BETRS is defined at 47 CFR 22.757, 22.759.

[166] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[167] The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

[168] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

[169] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[170] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998), 63 FR 40059 (July 27, 1998).

[171] *See* 47 CFR 101, *et seq.* (formerly Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[172] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[173] Auxiliary Microwave Service is governed by 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[174] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October of 2002).

estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed microwave licensees and up to 61,670 private operational-fixed microwave licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

54. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[175] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[176] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[177]

55. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards.[178] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

56. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[179] An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[180] The SBA has approved these small business size standards.[181] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

57. *Multipoint Distribution Service and Instructional Television Fixed Service.* Multipoint Distribution Service (MDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[182] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[183] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[184] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[185] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[186] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

58. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[187] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[188] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[189] The SBA has approved these small business size standards in the context of LMDS auctions.[190] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

59. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[191] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[192] A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[193] We cannot

[175] This service is governed by 47 CFR 22.1001–22.1037.

[176] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[177] *Id.*

[178] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[179] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

[180] Id.

[181] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[182] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593 paragraph 7 (1995), 60 FR 36524 (July 17, 1995).

[183] 47 CFR 21.961(b)(1).

[184] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October of 2002).

[185] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[186] In addition, the term ''small entity'' within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[187] *See* Local Multipoint Distribution Service, Second Report and Order, 12 FCC Rcd 12545 (1997), 62 FR 23148 (Apr. 29, 1997).

[188] Id.

[189] Id.

[190] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[191] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fourth Report and Order, 9 FCC Rcd 2330 (1994), 59 FR 24947 (May 13, 1994).

[192] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999), 64 FR 59656 (Nov. 3, 1999).

[193] Id.

estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

60. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[194] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[195] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[196] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [197] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[198] ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[199] The SBA has approved these small business size standards.[200] These size standards will apply to the future auction, if held.

62. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present RFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts.[201] According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year.[202] Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999.[203] Thus, under this size standard, the great majority of firms can be considered small.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

63. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[204] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

64. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

65. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[205] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[206] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[207] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[208]

66. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[209] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The RFA requires an agency to describe any significant alternatives that it has

[194] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October of 2002).

[195] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[196] Id. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[197] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[198] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000), 65 FR 59350 (Oct. 5, 2000); *see also* 47 CFR 101.538(a)(2).

[199] Id.

[200] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

[201] 13 CFR 121.201, NAICS code 514191 (changed to 518111 in October of 2002).

[202] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipts Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 514191 (issued October 2000).

[203] Id.

[204] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[205] 47 CFR 1.1164.

[206] 47 CFR 1.1164(c).

[207] Public Law 104–134, 110 Stat. 1321 (1996).

[208] 31 U.S.C. 7701(c)(2)(B).

[209] 47 CFR 1.1166.

considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

68. *The Omnibus Appropriations Act for FY 2003,* Public Law 108–7, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2003.[210] As noted, we have previously sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

69. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

70. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 204, *supra.*

Report to Small Business Administration: The Commission will send a copy of this *Report and Order,* including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Report to Congress: The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

ATTACHMENT B.—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2003

[In order to calculate individual service fees for FY 2003, we adjusted FY 2002 payment units for each service to more accurately reflect expected FY 2003 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2003 estimates with actual FY 2002 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2003 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2003 payment units are based on FY 2002 actual payment units, it does not necessarily mean that our FY 2003 projection is *exactly* the same number as FY 2002. It means that we have either rounded the FY 2003 number or adjusted it slightly to account for these variables.]

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2002 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2002 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2002 payment units.
LPTV, Translators and Boosters	Based on actual FY 2002 payment units.
Auxiliaries	Based on FY 2002 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on Media Services Bureau (previously Cable Services Bureau) estimates.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and FY 2002 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2002 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2003 revenue growth/decline for industry as estimated by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2002 payment estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

[210] 47 U.S.C. 159(a).

ATTACHMENT C.—CALCULATION OF FY 2003 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2003 Payment units	Years	FY 2002 revenue estimate	Pro-rated FY 2003 revenue requirement**	Computed new FY 2003 regulatory fee	Rounded new FY 2003 regulatory fee	Expected FY 2003 revenue
PLMRS (Exclusive Use)	3,300	10	204,239	251,148	8	10	330,000
PLMRS (Shared use)	53,300	10	2,166,927	2,664,616	5	5	2,665,000
Microwave	6,100	10	1,145,732	1,408,877	23	25	1,525,000
218–219 MHz (Formerly IVDS)	5	10	1,245	1,531	31	30	1,500
Marine (Ship)	4,400	10	518,070	637,058	14	15	660,000
GMRS	10,600	5	79,205	97,396	2	5	265,000
Aviation (Aircraft)	3,100	10	134,499	165,390	5	5	155,000
Marine (Coast)	1,000	10	89,666	110,260	11	10	100,000
Aviation (Ground)	1,700	5	99,629	122,511	14	15	127,500
Amateur Vanity Call Signs	9,800	10	130,016	159,877	1.63	1.63	159,740
AM Class A	78	1	159,008	195,528	2,507	2,500	195,000
AM Class B	2,168	1	1,957,308	2,406,853	1,110	1,100	2,384,800
AM Class C	1,004	1	675,633	830,809	827	825	828,300
AM Class D	2,021	1	2,214,699	2,723,360	1,348	1,350	2,728,350
FM Classes A, B1 & C3	3,168	1	4,531,717	5,572,539	1,759	1,750	5,544,000
FM Classes B, C, C0, C1 & C2	3,022	1	5,595,554	6,880,713	2,277	2,275	6,875,050
AM Construction Permits	48	1	17,694	21,758	453	455	21,840
FM Construction Permits	202	1	301,875	371,209	1,838	1,850	373,700
Satellite TV	126	1	102,658	126,235	1,002	1,000	126,000
Satellite TV Construction Permit	5	1	2,092	2,573	515	515	2,575
VHF Markets 1–10	44	1	2,062,516	2,536,224	57,641	57,650	2,536,600
VHF Markets 11–25	60	1	2,108,844	2,593,192	43,220	43,225	2,593,500
VHF Markets 26–50	73	1	1,788,836	2,199,687	30,133	30,125	2,199,125
VHF Markets 51–100	117	1	1,720,690	2,115,889	18,085	18,075	2,114,775
VHF Remaining Markets	209	1	755,062	928,481	4,442	4,450	930,050
VHF Construction Permits	16	1	60,275	74,119	4,632	4,625	74,000
UHF Markets 1–10	96	1	1,236,992	1,521,098	15,845	15,850	1,521,600
UHF Markets 11–25	96	1	1,005,653	1,236,627	12,882	12,875	1,236,000
UHF Markets 26–50	129	1	848,240	1,043,059	8,086	8,075	1,041,675
UHF Markets 51–100	181	1	733,517	901,988	4,983	4,975	900,475
UHF Remaining Markets	190	1	220,628	271,301	1,428	1,425	270,750
UHF Construction Permits	45	1	304,192	374,057	8,312	8,300	373,500
Auxiliaries	25,000	1	239,109	294,027	12	10	250,000
International HF Broadcast	5	1	2,959	3,639	728	730	3,650
LPTV/Translators/Boosters	2,993	1	892,674	1,097,699	367	365	1,092,445
CARS	1,450	1	103,614	127,412	88	90	130,500
Cable Systems	67,500,000	1	36,405,378	44,766,781	0.66	0.66	44,550,000
Interstate Telecommunication Service Providers	63,000,000,000	1	101,693,547	125,050,006	0.001985	0.00199	125,370,000
CMRS Mobile Services (Cellular/Public Mobile)	141,800,000	1	29,841,965	37,393,826	0.26	0.26	36,868,000
CMRS Messaging Services	19,700,000	1	1,769,590	1,662,680	0.08	0.08	1,576,000
MDS/MMDS	3,611	1	775,848	954,041	264	265	956,915
LMDS	975	1	209,481	257,594	264	265	258,375
International Bearer Circuits	2,600,000	1	5,638,992	6,934,127	2.67	2.67	6,942,000
International Public Fixed	1	1	1,395	1,715	1,715	1,725	1,725
Earth Stations	3,149	1	540,207	664,280	211	210	661,290
Space Stations (Geostationary)	75	1	7,052,426	8,672,192	115,629	115,625	8,671,875
Space Stations (Non-geostationary	7	1	616,902	758,589	108,370	108,375	758,625
Total Estimated Revenue to be Collected	.....	.....	218,757,000	269,184,570	.....	.....	268,951,805
Total Revenue Requirement	.....	.....	.....	269,000,000	.....	.....	269,000,000
Difference	.....	.....	.....	184,570	.....	.....	(48,195)

** 1.2297 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108–7 and 47 U.S.C. 159(a)(2)).

ATTACHMENT D.—FY 2003 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10

ATTACHMENT D.—FY 2003 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $'s)
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/MDS) (per call sign) (47 CFR part 21)	265
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	57,650
Markets 11–25	43,225
Markets 26–50	30,125
Markets 51–100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	15,850
Markets 11–25	12,875
Markets 26–50	8,075
Markets 51–100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits—Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00199
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2003 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	600	450	325	400	475	625
25,001—75,000	1,200	900	475	600	950	1,100
75,001—150,000	1,800	1,125	650	1,000	1,300	2,025
150,001—500,000	2,700	1,925	975	1,200	2,025	2,650
500,001—1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001—3,000,000	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in section 73.150 and 73.152 of the Commission's rules.[211] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal

[211] 47 CFR 73.150 and 73.152.

radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[212] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment F

Parties Filing Comments on the Notice of Proposed Rulemaking

Amateur Radio Vanity Call Signs

Charles P. Adkins
Daniel J. Berry
Robert Bingham
James Bridge
Tad Burik
Marc Colton
Kenneth Cooperstein
James Cour
Ralph D'Andrea
William J. Edwards
Paul M. Farrar
Dean K. Gibson
Chuck Gysi
Kevin Hemsley
Ralph Howes, Jr.
Steven Karty
Allan Kruger
Victor M. Magana
Doran S. Platt, III
Thomas Powell
Dennis G. Sarver
James B. Stafford
Jon Tandy
Frank A. Todd, IV
Jay Urish
Ira A. Wilner
American Mobile Telecommunications Association, Inc. (''AMTA'')
Arch Wireless; Allied National Paging Association; American Association of Paging Carriers; Metrocall Holdings, Inc.; and WebLink Wireless I, L.P. (''Joint Commenters'')
Bennet & Bennet, PLLC on Behalf of its LMDS Clients (''Bennet & Bennet'')
Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'')
Helen Graham
Industrial Telecommunications Association, Inc. (''ITA'')
Sky Television (''WSKY-TV'')
Verizon, Inc. (''Verizon'')

Parties Filing Reply Comments

Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'')
Kenneth J. Brown
Martin Group on Behalf of its LMDS Clients

Parties Filing a Notice of Oral Ex Parte Presentation

Arch Wireless, Inc.
Weblink Wireless I, L.P.
Metrocall Holdings, Inc.
American Association of Paging Carriers
Filed by Wilkinson, Barker, Knauer, LLP

Concurring Statement of Commissioner Michael Copps

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2003

I respectfully concur in today's decision. I am concerned that the Commission still does not address when or how it should adjust the regulatory fees to take into account changes to the cost of regulating various services.

In section 9 of the Communications Act, Congress directed the Commission to assess and collect regulatory fees. Congress further provided that the Commission shall develop accounting systems that allow it to modify the fee schedule to ensure that the fees are reasonably related to the benefits provided to the payor by the Commission's activities.

This year, as in past years, the Commission merely relies on across-the-board proportionate increases from the previous year's schedule of fees. I am encouraged that the Commission intends to address certain problems with this methodology by committing to initiate a proceeding to consider the fee structure governing LMDS and other wireless services. I urge the Commission to undertake a more comprehensive review of its methodology to ensure that we comply fully with the requirements of section 9.

Concurring Statement of Commissioner Jonathan Adelstein

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2003; MD Docket No. 03–83

I can only concur with the Commission's decision to collect regulatory fees for fiscal year 2003 because I disagree with the methodology used to determine the actual fees assessed in this item.

Section 9 of the Communications Act requires the Commission to assess and collect regulatory fees to recover the costs of regulatory activities performed by the Commission. It further requires that assessed fees be derived by determining the full-time equivalent number of employees (FTEs) performing these regulatory activities. Finally, while the Commission is able to make permitted amendments to the original Schedule of Regulatory Fees, Section 9(i) requires the Commission to do so based on an accounting system necessary to make the adjustments, which are authorized by subsection 9(b)(3).

I am concerned that the Commission's approach to regulatory fees does not truly recover the costs for regulatory activities on a service by service basis. We essentially rely on repeated proportionate increases of the preceding year's schedule, adjusted to reflect increases or decreases in payment units. While the statute does specifically contemplate a proportionate increase, subsection 9(b)(1)(3) also requires the Commission to amend the Schedule of Regulatory Fees if it determines that the schedule requires amendment to comply with the requirement to assess fees by determining the FTEs performing these regulatory activities.

While I understand the Commission has been considering a new cost-based accounting system for some time, it is unclear if that system will enable us to better comply with Section 9 of the Act. It is my hope that a new cost-based accounting system would more readily react to changes that have increased or decreased our regulatory activities on a service by service basis so that the appropriate costs are passed along to the proper services from year to year. I strongly encourage the Commission to take such steps over the upcoming year.

Commercial Mobile Radio Service (CMRS) Messaging. I am pleased that through the policy of permitted amendments we have made the decision to not increase the regulatory fee for the CMRS messaging industry. However, I disagree with the specific rationale for reducing the fee. I believe that the fee should have been maintained or reduced based on the level of regulatory activities expended by Commission FTEs not on the economic status of the industry, as this item does.

Indeed, many of our regulatees have suffered through difficult financial circumstances through the last several years. While the CMRS messaging industry may have suffered disproportionately, I would have preferred that we first assess the level of regulatory activity associated with the industry before making any adjustment based on an ostensible public interest determination. A cost-based accounting system may have permitted us to lower the CMRS messaging regulatory fee without even addressing the financial health of the messaging industry. Similarly, in the future, such a system may eliminate the disparities that result from automatic increases for all services based on a previous year's regulatory fee schedule, which we properly corrected here.

Classification of Local Multipoint Distribution Service (LMDS). Finally, I want to highlight my significant concern with that portion of the item in which the Commission concludes that LMDS warrants a separate fee category from microwave and assesses LMDS licensees a fee of $265 per license. As previously stated, I believe that in assessing regulatory fees, we should first look at the number of FTEs performing the regulatory activities associated with that service, which was not done here.

[212] 47 CFR 73.313.

While I agree it is appropriate to separate the LMDS service from the Multipoint Distribution Service (MDS) regulatory fee category, I am unable to agree with the conclusion that the LMDS service requires different regulatory activities than those associated with other Part 101 Fixed Microwave Services. Indeed, two other services that share very similar service characteristics with LMDS—24 GHz and 39 GHz—are also regulated under Part 101 and subject to the microwave regulatory fees.

Unfortunately, I am forced to concur to this portion because I understand that a decision to change the regulatory fee for LMDS at this time would make it impossible to both collect regulatory fees this fiscal year and provide Congress with 90 days notice of the amendment, as required by the Act. This item, however, does announce our plan to initiate a rulemaking that will closely look at the regulatory fees assessed against the microwave services including LMDS. I support this effort and strongly encourage the Commission to use this rulemaking as the foundation for a more comprehensive review of the methodology for assessing regulatory fees as outlined above.

Rule Changes

■ Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1117 is amended by adding paragraph (f) to read as follows:

§ 1.1117 Petitions and applications for review.

* * * * *

(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

■ 3. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	$25.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$25.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	$30.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$30.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$30.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$30.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
4. Shared Use Services:		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 601 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$10.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$10.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.

Exclusive use services (per license)	Fee amount [1]	Address
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	$15.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal Only (FCC 601 & 159)	$15.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	$15.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$15.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$15.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	$5.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal Only (FCC 605 & 159)	$5.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	$5.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (FCC 605 & 159)	$1.63	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	$1.63	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	[2] $.26	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
7. CMRS Messaging Services (per unit) (FCC 159)	[3] $.08	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
8. Multipoint Distribution (Includes MMDS and MDS)	$265	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
9. Local Multipoint Distribution Service	$265	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[1] Note that ''small fees'' are collected in advance for the entire license term. The annual fee amount shown in this table (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. Application fees may also apply as detailed in § 1.1102 of this chapter.

[2] These are standard fees that are to be paid in accordance with section 1.1157(b).

[3] These are standard fees that are to be paid in accordance with section 1.1157(b).

■ 4. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR, part 73)		
	Fee amount	Address
1. AM Class A:		
<=25,000 population	$600	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251–5835.
25,001–75,000 population	1,200	
75,001–150,000 population	1,800	
150,001–500,000 population	2,700	
500,001–1,200,000 population	3,900	
1,200,001–3,000,000 population	6,000	
>3,000,000 population	7,200	
2. AM Class B:		
<=25,000 population	450	
25,001–75,000 population	900	
75,001–150,000 population	1,125	
150,001–500,000 population	1,925	
500,001–1,200,000 population	2,925	
1,200,001–3,000,000 population	4,500	
>3,000,000 population	5,400	
3. AM Class C:		
<=25,000 population	325	
25,001–75,000 population	475	
75,001–150,000 population	650	
150,001–500,000 population	975	
500,001–1,200,000 population	1,625	
1,200,001–3,000,000 population	2,450	
>3,000,000 population	3,100	
4. AM Class D:		
<=25,000 population	400	
25,001–75,000 population	600	
75,001–150,000 population	1,000	
150,001–500,000 population	1,200	

Radio [AM and FM] (47 CFR, part 73)		
	Fee amount	Address
500,001–1,200,000 population	2,000	
1,200,001–3,000,000 population	3,200	
>3,000,000 population	4,000	
5. AM Construction Permit	455	
6. FM Classes A, B1 and C3:		
<=25,000 population	475	
25,001–75,000 population	950	
75,001–150,000 population	1,300	
150,001–500,000 population	2,025	
500,001–1,200,000 population	3,200	
1,200,001–3,000,000 population	5,225	
>3,000,000 population	6,650	
7. FM Classes B, C, C0, C1 and C2:		
<=25,000 population	625	
25,001–75,000 population	1,100	
75,001–150,000 population	2,025	
150,001–500,000 population	2,650	
500,001–1,200,000 population	3,900	
1,200,001–3,000,000 population	6,250	
>3,000,000 population	8,125	
8. FM Construction Permits	1,850	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	57,650	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	43,225	
3. Markets 26 thru 50	30,125	
4. Markets 51 thru 100	18,075	
5. Remaining Markets	4,450	
6. Construction Permits	4,625	
UHF Commercial		
1. Markets 1 thru 10	15,850	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	12,875	
3. Markets 26 thru 50	8,075	
4. Markets 51 thru 100	4,975	
5. Remaining Markets	1,425	
6. Construction Permits	8,300	
Satellite UHF/VHF Commercial		
1. All Markets	1,000	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Construction Permits	515	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74)	365	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 5. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio facilities		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$25.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Carriers		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues) (see FCC Form 499–A).	.00199	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 6. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$90	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per subscriber)	.66	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 7. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities		
1. International (HF) Broadcast	$730	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	1,725	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Geostationary Orbit)	115,625	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Non-Geostationary Orbit)	108,375	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Earth Stations		
Transmit/Receive & Transmit Only (per authorization or registeration)	210	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers		
International Bearer Circuits (per active 64KB circuit or equivalent)	2.67	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 8. Section 1.1166 is amended by adding paragraph (e) to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

* * * * *

(e) Petitions for waiver of a fee based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees for which waiver is sought exceeds $500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees above the $500,000 cap may be considered on a case-by-case basis.

[FR Doc. 03–20449 Filed 8–12–03; 8:45 am]

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Federal Register

Wednesday,
August 13, 2003

Part III

Environmental Protection Agency

40 CFR Part 432

Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category; Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 432

[FRL–7543–2]

RIN 2040–AD56

Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On February 25, 2002 (67 FR 8582), EPA published a proposal to establish technology-based effluent limitations guidelines and standards for the meat and poultry products (MPP) point source category (formerly the meat product point source category). The proposal would apply to approximately 300 facilities that have wastewater discharges directly to surface waters from the operation of new and existing meat processing, poultry processing and independent rendering facilities. EPA developed the proposal to address changes in the meat processing industry over the last 30 years, and to include measures that reduce pollution from nutrients. Also, the proposal would establish national regulations for the poultry processing industry for the first time.

In the proposal, EPA specifically solicited comment on 20 issues. EPA received comments on these and other issues from various stakeholders, including State and local regulatory authorities, environmental groups, individual industrial facilities and industry groups, and private citizens. This notice of data availability presents a summary of data received in comments since the proposal and additional data collected by EPA and describes how these data may be used by EPA in developing final regulations.

EPA is evaluating how the comments and new data may change certain aspects of the regulatory analysis presented at proposal and how this information might affect the regulatory options considered for the proposal. This includes an evaluation of the underlying data and methodology used to estimate the costs, pollutant load reductions, and financial impacts associated with the proposed regulation in light of the comments and new information. This document describes EPA's current thinking on these subjects and presents information on how the new data and information received since proposal could affect the proposed limitations and standards. Today, EPA is making these data and new information available for public review and comment. The new data and analyses on non-small red meat and poultry slaughterhouses (the largest industry subcategories) are summarized and discussed in this notice. Due to time constraints in preparing the NODA the new costs and loadings for processing-only red meat and poultry facilities, independent rendering facilities, and small facilities are not presented in this document, but this information will be available in the public docket for public review at the time of the NODA publication. EPA solicits public comment on the issues and information presented in this notice of data availability and in the public docket supporting this document.

This document also serves to clarify the distinction between an MPP facility and a CAFO, and specifically discusses the possible changes to the MPP rule as a result of the clarification.

DATES: You must submit comments by September 29, 2003.

ADDRESSES: Public comments regarding this document should be mailed to Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0014, or submitted electronically at *http.epa.gov/edocket.* For additional information on how to submit comments see section B, ''**SUPPLEMENTARY INFORMATION,** How and To Whom Do I Submit Comments?''

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Samantha Lewis at (202) 566–1058 or at the following e-mail address: *lewis.samantha@epa.gov* or Ms. Shari Barash at (202) 566–0996 or at the following e-mail address: *barash.shari@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	Primary SIC and NAICS codes
Industry	Facilities engaged in first processing, further processing, or rendering of meat and poultry products, which may include the following sectors:	
	Meat Packing Plant	2011 (SIC)
	Animal (except Poultry) Slaughtering	311611 (NAICS)
	Meat Processed from Carcasses	311612 (NAICS)
	Sausages and Other Prepared Meat Products	2013 (SIC)
	Poultry Slaughtering and Processing	2015 (SIC)
	Poultry Processing	311615 (NAICS)
	Rendering and Meat By-Product Processing	311613 (NAICS)
	Support Activities for Animal Production	11521 (NAICS)
	Prepared Feed and Feed Ingredients for Animals and Fowls, Except Dogs and Cats.	2048 (SIC)
	Dog and Cat Food	2047 (SIC)
	Dog and Cat Food Manufacturing	311111 (NAICS)
	Other Animal Food Manufacturing	311119 (NAICS)
	All Other Miscellaneous Food Manufacturing	311999 (NAICS)
	Animal and Marine Fats and Oils	2077 (SIC)
	Poultry Hatcheries	11234 (NAICS)
	Livestock Services, Except Veterinary	0751 (SIC)

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. This table lists the types of entities that EPA is now aware could potentially be regulated by promulgation of the proposed rule. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by promulgation of the proposed rule, you

should carefully examine the applicability subsection of each proposed subpart of part 432. You should also examine the description of the proposed scope of each subpart in section VI.B of the proposed rule. If you have questions regarding the applicability of this proposed rule to a particular entity, please contact the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 No. OW–2002–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the page limit plus an administrative fee of $25.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as 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. 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 section 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.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section 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 below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0014. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No.OW–2002–0014. 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 section C.2. These electronic submissions will be accepted in Word Perfect, Microsoft Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three (3) copies of your comments and enclosures as well as any references cited in your comments to Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0014.

3. *By Hand Delivery or Courier.* Deliver your comments to Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2002–0014. Such deliveries are only accepted during the Docket's normal hours of operation, as identified in section 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. Send information identified as CBI by mail only to the following address: Engineering & Analysis Division, Mail Code 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Samantha Lewis, Docket ID No. OW–2002–0014.

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 one of the people identified in the **FOR FURTHER INFORMATION CONTACT** section.

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 any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Contents of This Document

I. Purpose of this Document
II. New Analytical Data and Complete Survey Data
  A. Post-Proposal Analytical Wastewater Sampling Data
  B. Discharge Monitoring Report Data
  C. Information from EPA Regions and States
  D. Data Submitted by Industry
  E. Incorporation of All Surveys and Additional Survey Follow-Up
III. Revisions to the Cost Model
  A. Proposed Costing Approach
  B. Revised Costing Approach
IV. Revised Pollutant Loadings and Reductions Methodology
  A. Proposed Pollutant Loadings Approach
  B. Revised Pollutant Loadings Approach
V. Changes Considered to Applicability, Definitions, and Regulated Pollutants
  A. Changes Considered to Applicability and Definitions
  B. Changes Considered to the Pollutants Selected for Regulation
  C. Concerns Regarding Fecal Coliforms Limitations and Standards
  D. Concerns About Total Nitrogen Limitations and Standards
  E. Data Selection for Oil and Grease Loadings and Limitations/Standards
VI. New Information and Consideration of Revision to Economic Methodologies
  A. Closure Analysis
  B. Trade Elasticity Methodology
VII. Changes to EPA's Environmental Assessment
  A. Water Quality Modeling: What Changes and Information are Being Considered?
  B. Recreational Benefits: What Changes and Information are Being Considered?
  C. Toxicity Assessment: What Changes and Information are Being Considered?
  D. Other Benefits Categories Being Considered
VIII. Possible Changes to the Proposed Limitations and Standards
  A. Revision of Statistical Methodology for Long-Term Averages and Loadings
  B. Consideration of Assumed Monitoring Frequency
  C. Data Review for Final Limitations and Standards
  D. Evaluation of Final Variability Factors
  E. Evaluation of Achievability of Final Limitations and Standards
  F. Errors in 40 CFR part 432 and Recodification
IX. Consideration of Options
  A. Description of Modified Options
  B. Options Being Considered for Best Practicable Control Technology Currently Available (BPT)
  C. Options Being Considered for Best Available Technology Economically Achievable (BAT)
  D. Options Being Considered for New Source Performance Standards (NSPS)
X. Revised Estimates of Costs, Loadings, Economic Impacts, and Cost-Effectiveness
  A. Revised National Estimates of Costs, Loadings, and Economic Impacts
  B. Revised National Estimates of Cost Reasonableness and Cost-Effectiveness
  C. Results of Barrier to Entry Analysis for New Sources
XI. Solicitation of Comment

I. Purpose of This Document

Today's document has several purposes. First, EPA is presenting a summary of new data and information submitted during the public comment period on the proposed MPP regulations as well as data collected by EPA since proposal. Second, EPA discusses major issues raised in comments on the proposal and revisions in the data analyses resulting from these comments and the additional data. Third, the document summarizes EPA's current thinking on how this new information and suggestions made by commenters affect the analyses of the proposed rule. The document also summarizes several changes from the proposed regulatory requirements that EPA is considering for the final rule in light of the new material. The document includes revised target effluent concentrations for each model technology that incorporate post-proposal data collections and submissions that EPA used for developing revised compliance cost and pollutant loading reduction estimates.

Finally, the document discusses how incorporation of the new data and information would affect the cost and removals estimates associated with various treatment options.

Since proposal, EPA has incorporated a significant amount of additional technical and economic data (from fully analyzing all of the previously collected industry survey information as well as newly submitted/collected data) into the database used for developing the proposed MPP effluent limitations and standards. New data that EPA has used in the revised cost and economic models discussed in this NODA include data from screener surveys and detailed surveys that were not received in time to be incorporated into the analysis for the proposal and data from EPA and industry wastewater sampling of MPP raw wastewater, influent to treatment and wastewater effluent. In addition, EPA has modified certain assumptions used in its cost and pollutant loadings models. The new analyses presented in this NODA provide EPA's current thinking on how the analyses of regulatory options for the final rule may change as a result of the additional information obtained.

For a number of the subcategories proposed for regulation, these modifications have resulted in changes in the estimated cost and pollutant removals associated with the treatment options considered at proposal. As a consequence, the estimated economic impacts and cost effectiveness of the treatment options have changed as well. In light of these new results, EPA is seeking further comment on the regulatory options considered for the proposal as well as several modifications to these options that are based in part on new information regarding technology in place in the industry.

Through this notice of data availability, EPA seeks further public comment on any and all aspects of the specific data and issues it has identified here. However, EPA is seeking public comment *only* on these specific data and issues. Nothing in today's document is intended to invite further discussion of other issues discussed in the MPP proposal or to reopen the proposal in general for additional public comments. EPA continues to review the comments already submitted on the proposed rule and will address those comments, along with comments submitted on the data and issues identified in today's document, in the final rulemaking.

II. New Analytical Data and Complete Survey Data

There are five general areas of new analytical data and information: (1) EPA post-proposal sampling, (2) discharge monitoring report (DMR) data, (3) information from EPA Regional offices and States, (4) data submitted by industry, and (5) incorporation of all surveys and additional survey follow-up. EPA has incorporated much of this data into its analyses for this NODA. However, some data has not been included in the new analyses. As discussed elsewhere, analyses for non-small meat and poultry slaughterhouses are presented in this notice while analyses for further processors, renderers and small slaughterers are presented in the rulemaking docket. EPA has placed this data in the docket and although it has not incorporated the information into its analyses for the NODA, the Agency intends to use it for the final rule as appropriate. The detailed discussion below indicates which data have been incorporated into the NODA analysis at this juncture and which have not. Sections II.A–E discuss each of the five areas in more detail.

A. Post-Proposal Analytical Wastewater Sampling Data

In response to public comments, EPA has performed a number of analytical wastewater sampling episodes since the publication of the proposed rule to collect additional data on raw wastewater loadings, treatment efficiencies, and treatment variability for certain treatment options. EPA also performed a holding time study for the bacterial pollutant parameters (*e.g.* fecal coliforms).

1. EPA Site Visits and Sampling Episodes

During the comment period and at the public meetings on the proposal, commenters raised concerns over the representativeness of EPA's database for certain types of MPP facilities and whether the treatment systems at facilities sampled as ''BPT'' (Best Practicable Technology) or ''BAT'' (Best Available Technology) were accurately represented in the cost model. Based on these concerns, EPA worked with a coalition of industry representatives to identify types of facilities in these groups that would be good candidates for EPA's post-proposal wastewater sampling program. EPA then selected two poultry facilities identified by EPA regional personnel as being good sampling candidates and performed a pre-sampling site visit at each. During the poultry site visits EPA collected detailed information on the sampling logistics, production schedules, and processes the treatment systems employed. This information allowed EPA to determine whether the site was employing technology considered to be ''Best Available Technology.'' Based on this information, EPA selected one poultry facility for analytical wastewater sampling. This facility performs first processing, further processing and rendering. EPA has incorporated data from this sampling episode into the analyses presented in today's notice.

In addition, based on comments concerning facility operations and analytical results during the pre-proposal sampling episodes, EPA also decided to conduct an additional sampling episode at two of the six red meat facilities that were sampled prior to proposal. In response to comments regarding background levels of metals and other pollutants, EPA collected source water samples during each post-proposal sampling episode. EPA collected characterization samples of wastewater from production operations and paired influent and effluent samples from these facilities' treatment systems over five days. EPA notes that it did not use the earlier data from the pre-proposal sampling episodes at these two facilities in the analyses presented in today's notice, due to certain data quality issues. However, following completion of an evaluation of these issues, EPA may use these episodes along with the post-proposal sampling data, for the analyses supporting the final rule (*see* Section VIII for discussion of these data issues and solicitation of comment).

In addition, EPA conducted a post-proposal site visit to a poultry further processing facility (*i.e.*, a poultry processing facility where first processing and rendering are not performed on-site) that it had not sampled previously and obtained grab samples to characterize treatment system influent (*i.e.*, raw influent prior to preliminary treatment steps) and effluent wastewater. EPA has incorporated the results from this episode into its revised analysis of poultry further processing facilities. Analyses for further processors can be found in Section 21.1, DCNs 125606 and 126002 of the public record.

EPA also sampled for Ultimate BOD at one red meat and one poultry facility. The results of the Ultimate BOD analysis have not been incorporated in the analyses for the NODA (*See* Section V.D for a discussion on the issues associated with use of these data). Non-confidential versions of all new Site Visit Reports (SVRs) and Sampling

Episode Reports (SERs) can be found in Section 19.1.4.2 the public record for this notice.

EPA previously indicated that it would sample at an independent renderer after proposal (see 67 FR 8606). However, EPA subsequently decided that other data sources provided adequate information and instead evaluated information on three independent renderers provided by the industry. This information included data on the size of each facility, the wastewater treatment in-place and the wastewater characteristics of the influent to the treatment system and treated effluent. Two of the three facilities also provided data collected from wastewater sampled at intermediate points in the wastewater treatment system. In EPA's view, this data combined with (or evaluated in comparison with) data from sampling which included rendering wastewater (*e.g.*, data from a facility that performs slaughtering, further processing, and rendering) provide an appropriate basis for evaluating the baseline loadings and treatment-in-place at rendering facilities. EPA has used this data in the NODA analysis for developing default baseline concentrations and assessing treatment-in-place for facilities in Subcategory J (Independent Renderers). EPA's estimates of costs and pollutant loadings for Subcategory J are presented in Section 21.1, DCNs 125606 and 126002 of the public record.

2. Holding Time Study

When EPA conducted its own sampling episodes at the facilities, it exceeded the required holding time for some samples. While laboratories qualified to conduct total coliforms, fecal coliforms, and *E. coli* analyses may have been within driving distance of the facilities being evaluated, laboratories qualified to perform fecal streptococcus, *Salmonella,* and *Aeromonas* analyses generally were not available, as analysis for these analytes is more complex than coliforms analyses. As a result, for most sampling episodes, EPA decided samples should be shipped overnight to a laboratory capable of performing all of the bacterial analyses. Because these samples would exceed the holding time requirements in 40 CFR part 136, EPA performed a holding time study to evaluate the possible effects of analyzing samples at different holding times.

To determine if results for samples with longer holding times were consistent with results for samples analyzed within eight hours (*i.e.*, the time period consistent with 40 CFR part 136 for compliance sampling) for total coliforms, fecal coliforms, *E. coli, Aeromonas,* fecal streptococcus, and *[Salmonella* from MPP facilities, EPA conducted a study to evaluate sample concentrations at 8, 24, 30, and 48 hours after sample collection for wastewater effluent samples from a beef facility (before disinfection and final effluent), a pork facility (final effluent prior to discharge into the sewer system), and a poultry facility (final effluent). The study report which contains results for all target bacteria is located at DCN 165311 in Section 22.6 in the public record for this NODA. This NODA discusses only the results for fecal coliforms and *E. coli* as EPA is not intending to establish numeric limitations for other target indicators in the holding time study. As holding times increase, the fecal coliforms and *E. coli* concentrations may change. EPA's intent in conducting the study was to provide some insights about the length of time that would still provide comparable results to samples held for eight hours.

For red meat (*e.g.*, beef and pork) effluent, the results of this study indicate that samples for fecal coliforms and *E. coli* measurements can be held for 24 hours and still produce results comparable to analyses conducted at 8 hours after sample collection, provided that samples are stored on ice until analysis and not frozen. For poultry wastewater effluent, the study results indicate that samples held longer than the 8 hours do not provide comparable results to results at 8 hour holding times.

B. Discharge Monitoring Report Data

As discussed further in Sections III and VIII, EPA is considering the use of discharge monitoring report (DMR) data, and the supporting daily or weekly measurements, to evaluate and revise as necessary the proposed MPP limitations and standards (Section VIII) and compliance cost and loadings estimates for various technology options for the final rule (Section III). EPA used the summary DMR data from detailed survey recipients and PCS to supplement its sampling data in the development of pollutant loading and reduction estimates presented in today's notice. EPA has also incorporated daily/weekly DMR supporting data from 16 facilities in the slaughtering subcategories (A–D and K) into the revised facility-level long-term averages and variability factors, see DCN 165080 and DCN 165160.

EPA obtained summary DMR data, where available, from: (1) EPA's permit compliance system (PCS) for survey facilities (both detail survey sites and screener survey sites), (2) EPA Regional offices for some screener survey sites, detailed survey sites, and facilities identified in PCS as performing meat or poultry processing operations (see Section II.C below), and (3) individual further processor screener survey sites based on discussions during survey follow-up (see Section II.E for additional discussion on survey follow-up). EPA also requested detailed DMR data from 24 facilities in the slaughtering subcategories (Subcategories A–D and K) as discussed below.

Following proposal, based on the DMR summary data provided in the detailed surveys or PCS, EPA requested individual data points (*e.g.*, daily or weekly measurements) from 24 detailed survey sites in Subcategories A–D and K for use in evaluating and revising the limitations and standards and supporting analyses (See Sections III.B and VIII.D of today's notice for more information on how EPA is considering using the DMR data). To date, EPA has received complete data from16 facilities, partial data from 5 facilities, and no data from 3 facilities. EPA has placed all data received to date in the public record (Section 19.3.3) and will include any additional data as it is received. EPA intends to incorporate all appropriate data from this request into the analyses for the final rule including target effluent concentrations used for estimating compliance costs and pollutant load reductions and for developing or evaluating the long-term averages and variability factors for the final limitations. For this notice, EPA has incorporated the 16 complete daily/weekly data sets into its development of facility-level (episode-level) long-term averages and variability factors (see DCNs 165080 and 165160), but not into the revised analyses of costs and loadings. Summary DMR data has been used in the revised cost and loading estimates however.

C. Information From EPA Regions and States

1. Permits, Permit Applications and Fact Sheets

In an effort to obtain additional information without burdening the facilities directly, EPA gathered permits, permit applications and permit fact sheets from EPA Regional offices and States for some facilities from which EPA did not receive a detailed survey and which were identified as meat or poultry processors either in EPA's Permit Compliance System (PCS) or in the screener survey database. PCS is a database which contains monitoring and NPDES permit data from major and

some minor point sources which discharge wastewater directly to surface water.

EPA was interested in obtaining information on the permit requirements and treatment-in-place at facilities which had specific production processes about which we had limited information for the proposal (*e.g.* stand-alone further processors and renderers.) EPA identified over 980 facilities in PCS that were classified under SIC codes 2011, 2013, 2015 and 2077 (the codes which identify meat or poultry processing and rendering), plus some related codes referring to different aspects of food processing such as 2091 (Canned and Cured Fish and Seafoods) and 2099 (Food Preparations, Not Elsewhere Classified). EPA then refined the list by selecting those facilities that had data in PCS for at least one of the following pollutant parameters: TKN, nitrate + nitrite, total phosphorus, chemical oxygen demand (COD), carbonaceous biochemical oxygen demand (CBOD), total nitrogen, fecal streptococci, total dissolved solids (TDS), chloride, *E. coli,* oil and grease as hexane extractable material (O&G as HEM), copper, chromium, nickel, and zinc. EPA then added to the list all further processors and independent renderer that were in the screener survey database, but were not currently on the list generated through PCS. Detailed survey recipients were then excluded because they provided sufficient information in their survey responses. EPA then sought permits for all the facilities identified on this refined list, which is included in the record (*see* DCN 100769).

EPA obtained a copy of the permit, permit application and/or fact sheet for 61 facilities (in 20 states) of 104 total facilities (in 27 states) on the refined list and obtained notice of closure on an additional 14 of the 104 facilities. However, EPA intends to include this information in its analyses for the final rule as appropriate. This information will provide EPA with descriptive information on additional MPP facilities which, when combined with the monitoring data contained in PCS, may help EPA to further evaluate the baseline level of wastewater treatment currently practiced by the industry.

More specifically, EPA is considering using this data to fill data gaps in the information used in EPA's estimates of baseline pollutant loadings for certain types of facilities (*e.g.*, further processors and independent renderers) and for developing the option-specific target effluent concentrations (*i.e.*, long-term averages) used for estimating compliance costs and pollutant reductions for these facilities for the final rule. For these classes of facilities, EPA would use the permit, fact sheet and permit application to expand the information regarding production practices and wastewater treatment currently in-place to better assess the baseline performance of these facilities and costs to comply with the regulatory options considered. *See* Section 21.1, DCNs 125606 and 126002 of the public record for EPA's estimates of costs and pollutant reductions for further processors and renderers. These estimates do include these additional data.

EPA may also use the data from PCS to assess the achievability of the limitations for these types of facilities in the final rule. EPA notes that because PCS does not generally contain the weekly/daily individual data points, EPA intends, at this time, to rely on other more detailed data to develop limitations and standards for these types facilities.

2. Summary of POTW Interferences and Upsets

As discussed in the proposal (67 FR 8637), EPA worked with its Regional offices and state pretreatment coordinators to collect additional data to determine whether or not national categorical pretreatment standards are necessary for the MPP industry. EPA did not propose to establish pretreatment standards for existing or new facilities in the MPP industry.

For each Region, EPA listed the indirect discharging screener survey facilities and corresponding POTWs according to the survey response. EPA requested the Regional Pretreatment Coordinators to verify that the screener survey MPP site had correctly identified the receiving POTW. EPA also asked the coordinators to identify any instances of interference or upsets that were attributed to the listed MPP site. The majority of MPP indirect dischargers are located in EPA Region 5 (Illinois, Ohio, Indiana, Michigan, Minnesota, and Wisconsin) and the majority of responses from this request were also from Region 5. There were very few reported instances of interference or upset from MPP facilities. One state pretreatment coordinator noted that in many cases MPP facilities pay a surcharge to the POTW to discharge higher than normal strength wastewater. In California, the state with the largest number of indirect discharge MPP sites, only two instances of POTW problems were identified as related to MPP discharges. Although it did not identify any specific instances of problems, the State of Oklahoma indicated its belief that not all POTWs can handle the conventional pollutant loadings from MPP facilities. For this reason and because of the lack of information available to establish local limits, the State supported the promulgation of pretreatment standards for MPP facilities that discharge to POTWs.

At this time, EPA does not consider this Regional/State information to be sufficient evidence that pretreatment standards are necessary for the MPP industry. For further discussion and to review the data listing and responses described above, *see* DCN 115077 in the public record for today's notice.

D. Data Submitted by Industry

In addition, EPA received some estimated summary-level cost data in the industry comments on what it may cost for a red meat and a rendering facility to upgrade their existing technologies. Also, several facilities submitted cost data as part of their detailed survey that provided estimated costs specific to installation or upgrade of each facility's wastewater treatment system. EPA also obtained upgrade/retrofit cost information from one red meat site and one poultry products site as a follow-up to earlier, pre-proposal sampling and from one poultry site that was sampled post-proposal. EPA has used this information in the development of the revised cost estimates presented in today's notice.

EPA has also received comment from industry representatives on components of its revised costing methodology during meetings with stakeholders. These comments and EPA's response, including a summary of changes made to the cost models as a result, can be found in the public record supporting this NODA (*see* DCN 115078). Non-confidential cost information can be found in Section 19.5 of the public record.

In general, these industry commenters believed that EPA had substantially underestimated the costs of achieving the proposed limits, in part because they believed additional treatment steps and/or capacity would be needed to reliably and consistently comply with these limits. Among the most significant issues raised were the sizing of the aerobic tanks, the need for a supplemental carbon source to maintain an adequate BOD to TKN ratio in the influent to the aerobic treatment stage, the costs for by-passing a portion of the treatment stream around the anaerobic lagoon to maintain sufficient BOD for denitrification, the level of nitrate/nitrite (as nitrogen) reduction achievable in the anoxic tank and the degree of comparability between poultry

and red meat facilities with respect to raw wastewater nitrogen concentrations, the level of cost savings attributable to reduced chemical additions for alkalinity, the cost and required dosage for polymer additions, the need for final holding lagoon to achieve consistent compliance, the practicality of achieving a 10 times recycle rate in the anoxic tank, and the incremental labor necessary to operate the treatment system.

Using revised assumptions that they believed were more realistic, these commenters estimated costs for 9 sample facilities that ranged from 4 to 8 times the cost estimates projected by EPA for these same facilities. EPA is still reviewing the revised assumptions used by these commenters, but preliminarily believes that some of them may be overly conservative and thus tend to overstate costs. EPA solicits comment and especially real-world data from plants operating the various technology options under consideration for the final rule to aid in determining realistic parameter estimates and assumptions for its cost models.

EPA received limited wastewater sampling data for seven specific facilities in response to its request in the proposed rule. These data were submitted by two individual facilities, two companies, one provided site-specific data for four facilities and one provided generalized data for its facilities, an industry coalition, and an industry trade association. The data submitted by the industry coalition and the industry trade association were the same, and represented data for four pollutants for one of the poultry facilities sampled by EPA for the proposal. This data has not been incorporated into the analyses for today's notice. Of the seven facilities for which data were submitted, data for two of the facilities was the same as the data provided in the facilities' detailed surveys (this data was provided only for TKN). EPA included this data in the loadings and cost analyses in today's notice. EPA did not use data from the remaining facilities for its analyses for today's notice because EPA requires supporting information about the facilities (*e.g.*, treatment system type, production type) before the data can be used in order to classify the data properly. Once the supporting information is submitted by the facilities, EPA anticipates that it will be able to use this data for the final rule. EPA did not incorporate the data submitted by the remaining company because it only supplied a typical range of TKN values for a number of its poultry facilities, and not for any specific facility. EPA has since requested facility-specific data from this commenter for each of its facilities (*see* Section II.B regarding DMR data requests).

E. Incorporation of All Surveys and Additional Survey Follow-Up

As discussed in the preamble to the proposed rule (67 FR 8593), EPA was not able to incorporate data from all complete survey responses prior to publication. In the proposal, EPA stated that it would use information from all screener and detailed surveys, including those collected after the cut-off dates (April 24, 2001 and May 29, 2001, respectively), in the analyses presented in this Notice of Data Availability. For the proposal, EPA was able to include information from 961 of 1500 screener survey responses and some of the information from 241 of 328 detailed survey responses. EPA notes that not all surveys returned to EPA provide complete information (even with EPA follow-up). For today's notice, EPA is using responses from 1,254 screener surveys and 328 detailed surveys. EPA notes that the analyses presented in today's notice focus on the 53 (of 328) detailed survey recipients who are non-small meat and poultry slaughterhouses discharging directly to surface waters. However, EPA included all the usable screener surveys and detailed surveys in its calculation of survey weights for developing national estimates (see Section III.B.3 for a discussion of survey weights). EPA has also analyzed detailed survey data from 5 additional direct dischargers which include three small facilities (two poultry facilities and one red meat facility), one poultry further processing facility, and one facility that only performs rendering operations. EPA has included data from these facilities in its analyses for small slaughterhouses, further processors, and renderers in Section 21.1 of the docket and intends to use the data from these facilities in developing the final rule. See Section X, for a discussion of EPA's revised estimates of compliance costs, pollutant reductions and economic impacts.

1. Confirmation of Screener Survey Information

In addition to incorporating the survey data described above, EPA sought to clarify screener survey information and collected additional information from screener survey sites in response to comments regarding the validity of EPA's database and EPA's characterization of the baseline pollutant loadings from the MPP industry. EPA contacted 34 screener survey facilities that appeared to be direct dischargers based on their screener survey responses. These 34 facilities represent direct dischargers that were not engaged in slaughtering operations (*i.e.*, they only performed further processing or rendering). The majority of these sites were identified as further processors, however, 5 sites were renderers. EPA contacted these facilities to discuss the wastewater treatment systems in place at the site in 1999 (the base year of the survey) as well as to verify the following information: Manufacturing type (*e.g.*, red meat further processor vs. poultry further processor); wastewater flows; production classification (small vs. non-small); discharge mode/wastewater management type (*e.g.*, indirect discharge to POTW, direct discharge to receiving water, land application); monitored pollutant parameters; current wastewater treatment system and target concentrations; and discharge/receiving water body. EPA obtained responses from 30 sites. Of these, 18 were in fact direct dischargers, 11 turned out to be indirect dischargers and one was not currently operating. EPA has incorporated this information into the analyses of further processors and renderers in Section 21.1., DCNs 125606 and 126002 of the docket. EPA also received discharge monitoring report (DMR) data from three further processing sites in response to these follow-up discussions. This DMR data has also been incorporated into the analyses of further processors and renderers in Section 19.3.3 of the docket. Non-confidential responses are provided in Section 19.3.1 of the public record for today's notice.

2. Confirmation of Detailed Survey Information

EPA conducted several follow-up efforts to ensure that the detailed survey data collected from MPP facilities are as complete and accurate as possible, including follow-up phone calls to facilities if survey responses were incomplete or if there were discrepancies in the data reported in the detailed surveys. EPA then made an effort to systematically confirm information for all direct discharge detailed survey recipients. Specifically, EPA mailed a summary of facility-specific responses (referred to as a ''fact sheet'') to the 58 detailed survey respondents that indicated they were direct dischargers in their survey response. EPA did not send ''fact sheets'' to indirect dischargers because, as proposed and based on further evaluation as discussed above, EPA is not considering further regulation of

such facilities in the final rule. The fact sheet requested confirmation of the following information for 1999 by product type (*i.e.*, red meat or poultry): Type of processing (*i.e.*, first processing, further processing, rendering), the related production volume, and the wastewater flows from various production operations. In addition, EPA requested information on the site's wastewater treatment system. This included confirmation of the Agency's classification of the treatment level of the facility's wastewater treatment system according to EPA's treatment option designations as identified in the cover letter to the facility; average effluent flow rate; targeted pollutant parameters (*e.g.*, BOD removal, nitrification, phosphorus removal); and confirmation of the summary of the effluent parameters and concentrations from the survey that EPA intends to use in developing pollutant loading estimates. Based on the revised fact sheets, EPA incorporated changes to its database for today's notice to the extent possible (*e.g.*, EPA is still contacting some facilities to clarify their response). See Section 19.3.2.4 of the record for copies of non-confidential letters and fact sheets.

III. Revisions to the Cost Model

A. Proposed Costing Approach

EPA proposed to establish effluent limitations based on the performance of biological wastewater treatment designed and operated to achieve denitrification. For the proposed costs, EPA used a model facility approach, applied frequency factors to obtain national estimates, and applied the CAPDET computer model.

1. Model Facility Approach

To determine the economic achievability of this technology EPA used a model facility approach to estimate the cost of installing or upgrading the wastewater treatment to achieve the limits. As described in the preamble to the proposed regulation (67 *FR* 8607), EPA developed 19 separate model facility groups based on the different combinations of production processes that are possible (for example a meat slaughtering, rendering and further processing facility as compared to a meat slaughtering and rendering facility). These model facility groups were further subdivided according to facility size based on annual production. The distribution of facilities by size and the production range defining each size group were derived from the screener survey responses, and a median wastewater flow for each model facility/size category combination was identified.

2. National Estimates Using Frequency Factors

EPA evaluated the baseline wastewater treatment technologies using information provided in response to the detailed survey as described in the proposal preamble (67 *FR* 8609). The number of facilities with specific treatment units, as reported in the detailed surveys were counted and from these counts EPA developed frequency factors, presented as percentages and applied them to the national population to represent the baseline level of treatment-in-place. These frequency factors were based upon raw counts of survey responses without regard to the sample weights, because these weights were not yet available for the proposal, due to the fact that EPA had not completed its analysis of survey results. *See* Section III.B.3 for an explanation of the survey weights. As an example of the type of frequency factor calculation used at proposal, suppose ten facilities reported a specific treatment system, then a frequency factor of 3 percent of the industry as a whole was calculated by dividing ten by the number of detailed survey responses (328), and expressing as a percent. This frequency factor was then applied to each model facility group.

3. Use of CAPDET Model

At proposal, EPA used a commercially available cost model entitled the Computer Assisted Procedure For Design And Evaluation Of Wastewater Treatment Systems (CAPDET) as one approach to estimate the costs of wastewater treatment for meat and poultry processors (67 *FR* 8609). CAPDET designs and estimates the cost of construction, installation and annual operation of wastewater treatment from the ground up, but cannot evaluate the cost of upgrades to existing equipment. Since all direct discharge MPP facilities have wastewater treatment in place, much of the costs that would be incurred by MPP facilities would be associated with upgrades to their treatment systems. Recognizing that CAPDET is not suited for addressing upgrades, EPA developed a second approach for the proposal analysis that specifically estimated the retrofit costs associated with the required upgrades (67 *FR* 8610).

B. Revised Costing Approach

Based on public comments on the proposed costing approach and the incorporation of new data, EPA has revised its approach for developing national estimates of compliance costs for the MPP industry. For the costs presented in today's notice, EPA used a facility-specific approach, applied survey weights to obtain national estimates, and developed its own computer model specific to the MPP industry.

1. Comments on Proposed Approach

EPA received several comments critical of the proposed approach for developing costs for the MPP industry. Many comments criticized the use of the frequency factor approach for estimating national costs. Commenters were concerned that this approach identified the frequency of a particular treatment technology in place without considering the varying levels of performance within that technology.

EPA also received comments regarding the use of the CAPDET model to estimate the costs of compliance. Commenters argued that CAPDET is not appropriate for estimating the costs of treating meat and poultry products wastewater. Commenters also expressed disagreement over the retrofit cost estimate arguing that this approach does not account for site specific factors and concerns such as the need to add a source of carbon which would result in an increase in the sludge produced. Some facilities may need a carbon source, such as methanol, to provide enough BOD for denitrification to occur. These aspects of the wastewater treatment requirements would result in additional costs. The commenters stated that EPA had underestimated the costs by an order of magnitude.

2. Facility-Specific Model Approach

In response to comments and because it was able to incorporate new data, EPA has substantially revised the method to estimate compliance costs since the proposal by developing a cost model specific to the Meat and Poultry Products Category. This new approach considers the costs for each facility, rather than the proposed model approach. EPA has now estimated facility specific costs for each of the 53 direct discharging meat and poultry slaughterers (*i.e.,* first processors) that responded to EPA's detailed survey. These estimates are the basis for the national estimates of costs for these subcategories. EPA classified each detailed survey facility's wastewater treatment system based on the description provided in the survey, and the summary of monitoring data also submitted with the survey. In some cases, EPA modified a facility's discharge status from direct to indirect discharger following discussions with

the facility to clarify the discharge destination of its process wastewater versus non-process wastewater. Once the facility's treatment system was classified into one of the technology options under consideration, the requirements for upgrading the system to comply with more stringent options were identified and costs were estimated for these upgrades using EPA's MPP Industry Cost Model (*see* Section III.B.4).

3. National Estimates Using Survey Weights

Instead of using ''frequency factors'' (*see* Section III.A.2) that were used as rough estimates for the proposal, EPA applied survey weights to the facility-specific estimates to derive national estimates of costs, pollutant removals, and economic impacts associated with the MPP rule. The survey weights incorporate the statistical probability that a particular facility was selected to receive the detailed questionnaire and are adjusted for any nonresponse. For example, a survey weight of 3 means that the facility represents itself and two others in the sample. Probability samples, which were used to select the facilities for the MPP surveys, allow inferences to be made to the sampling frame from which the sample was drawn. Numerous textbooks and technical journals describe a variety of ways of drawing valid probability samples and making inferences to the sampling frame from which the sample was selected. EPA determined the size (*i.e.,* number of facilities) of the probability samples by applying standard statistical equations. These samples provide an adequate database that can be used to estimate population characteristics.

Since the proposal, EPA has incorporated data from additional screener and detailed surveys into its analysis. Using this new information, EPA has revised the screener survey weights and calculated the detailed survey weights. To calculate the screener survey weights, EPA used standard survey statistics based upon the sample design and nonresponse. Appendix B of the proposal development document provides the equations used for these calculations. To calculate the detailed survey weights, EPA followed the general methodology described in Appendix B which first develops survey weights based upon the sample design, then adjusts them for nonresponse, and finally calibrates them based upon the screener national estimates. DCN 115115 provides the values of the survey weights for the non-small direct discharge slaughtering facilities in Subcategories A–D and K. This section of the NODA provides more details about the calibration step used to calculate the final detailed survey weights.

By using data from either the screener questionnaire or the detailed questionnaire, EPA could categorize the survey data into one of 14 groups described below. The availability of overlapping information was an important consideration because the screener questionnaire collected data on only a few characteristics. However, because the screener has a larger sample size, it provides better estimates of the number of eligible facilities in the MPP population. Thus, EPA used the screener estimates to calibrate the detailed survey weights, as described below, so that the national estimates from the two questionnaires would result in the same values for those characteristics contained in both surveys.

As a first step in the calibration, EPA categorized facilities into groups using the facility meat type (red meat, poultry, or a mixture) and production type (first processing, further processing, first processing/further processing, first processing/rendering, further processing/rendering, first processing/further processing/rendering). In addition, EPA gathered independent renderers into one group. As a result of crossing three meat types by six different production types and adding rendering, EPA obtained 19 possible groups of facilities. EPA further split these groups into non-small and small based on total production. As a result, EPA obtained a total of 38 possible groups of facilities.

Within each of the 38 possible groups, EPA then compared the estimated number of facilities using the screener weights to the estimates using the detailed survey weights. Because the detailed questionnaire had data for only a few or no facilities within some groups, EPA determined that it was necessary to collapse some groups. If a group had less than five respondents to the detailed questionnaire or less than 10 respondents to the screener questionnaire, EPA collapsed it with another group. Also, if the estimates from the screener and the detailed questionnaire differed by more than a factor of 2.5, then EPA collapsed that group with another to improve variance estimates. By collapsing groups, EPA obtained information about facilities with similar characteristics, and improved precision for its national estimates based upon data available only from the detailed questionnaire (*e.g.,* data about the wastewater treatment components). To perform this step, EPA determined that it was appropriate to collapse certain production types and sizes within meat type. For example, EPA collapsed the two groups for non-small red meat slaughters and non-small red meat slaughter/render into a single group. After collapsing the groups, EPA obtained the 14 groups shown in Table III.B–1.

Within each of the 14 groups, EPA then calibrated the detailed survey weights so that the national estimate of facilities using the detailed questionnaire database matched the national estimates based upon the screener data. To calibrate the survey weight, EPA used the ratio of the national estimates based upon the screener database and the detailed questionnaire database, respectively. For example, for a particular group (such as renderer), suppose that the national estimate based on the screener weights and the screener database is 30 facilities. Further suppose that 20 facilities is the national estimate based upon the detailed survey weights and the detailed questionnaire database. The ratio of the two estimates is 1.5. Thus, each detailed survey weight in the group would be multiplied by 1.5. Therefore, a detailed survey weight of 4 for a particular facility would be adjusted upward to a final survey weight of 6. Because facilities from different sampling strata could be assigned to the same group, it is possible to have facilities with different survey weights within a particular group.

Table III.B–1 provides the number of facilities in the screener database, the number of facilities in the detailed questionnaire database, and the national estimate of the number of facilities. Note the national estimates presented here include all MPP facilities (*e.g.,* direct dischargers, indirect dischargers, zero dischargers, and all facilities regardless of size) and is not the same as the national estimate of number of in-scope MPP facilities (*e.g.,* direct dischargers above the category-specific production thresholds).

TABLE III.B–1.—NUMBER OF MPP FACILITIES

Group	Number of facilities		
	Screener database	Detailed questionnaire database	National estimate
Non-small Red Meat Slaughter or Slaughter/Render	28	23	62
Small Red Meat Slaughter or Slaughter/Render	64	7	490
Non-small Red Meat Processor or Processor/Render	22	5	83
Small Red Meat Processor or Processor/Render	311	43	1873
Non-small Red Meat Slaughter/Processor or Slaughter/Processor/Render	27	25	74
Small Red Meat Slaughter/Processor or Slaughter/Processor/Render	122	16	1012
Non-small Mixed Meat	92	15	270
Small Mixed Meat	344	18	1924
Non-small Poultry Slaughter	66	22	149
Non-small Poultry Slaughter/Render	10	5	21
Non-small Poultry Slaughter/Processor, Processor, or Processor/Render	72	35	162
Non-small Poultry Slaughter/Processor/Render	10	9	24
Small Poultry Slaughter, Slaughter/Render, Slaughter/Processor, Slaughter/Processor/Render, Processor, or Processor/Render	56	6	344
Render Only	29	20	132

4. MPP Industry Cost Model

Instead of using the CAPDET model (*see* Section III.A.3), EPA developed cost equations for treatment units that were derived from a combination of vendor supplied information, data and information provided in the detailed surveys, and the comments on the proposal. Because the detailed survey did not collect information about many of the specific parameters used in the production process and treatment system of individual facilities, EPA has supplemented the facility-specific information with typical specifications or parameters derived from literature, survey results, and industry comments. For example, EPA has assumed that facilities have pipes of typical sizes for their operations. As a consequence of such assumptions, a particular facility might need a somewhat different engineering configuration from what was modeled if it has installed equipment that varies from the typical equipment or specifications used to estimate costs. However, because EPA has applied typical specifications and parameters that are broadly representative of the industry to a range of processes and treatment systems and has contacted facilities, as follow-up, to identify the site specific configuration information to the extent that the facility can furnish it, EPA considers that costs for these detailed survey facilities are reasonably accurate.

Some of the areas that EPA paid particular attention to in revising the estimates of cost, include issues associated with the pretreatment of wastewater prior to reaching the biological wastewater treatment system, such as BOD levels, the generation of sludge, and the type of disinfection.

The type of pretreatment may affect the levels of BOD entering the biological treatment system. Commenters said that pretreatment with anaerobic lagoons is so effective at reducing BOD that if facilities were required to denitrify, a source of carbon would have to be added to the wastewater to ensure that denitrification would take place. Based on industry-supplied data and a review of the literature, EPA has estimated that an influent BOD:TKN ratio of at least 3:1 is preferable for effective denitrification. EPA has thus included costs for facilities to bypass some of the wastewater around the anaerobic lagoons to supplement BOD if data indicate that the concentration of BOD leaving the anaerobic lagoon is not at least three times the concentration of TKN. Anaerobic lagoon bypass was observed at one facility EPA sampled. Because flows may be too low for effective bypass during periods of no or low operations (*e.g.,* weekends) at some facilities, EPA costed those facilities for the purchase and operation of a system to use methanol as a carbon source for denitrification. To ensure facilities can meet the low nitrogen concentrations in Option 4, EPA also costed for methanol use in the second anoxic tank during regular activity (*e.g.,* weekdays) if BOD supplementation is needed.

In conjunction with the higher BOD concentrations in the biological wastewater treatment system, EPA has also accounted for increased sludge generation and estimated costs for additional sludge dewatering and hauling. EPA has estimated the cost to upgrade the biological wastewater treatment to accomplish nutrient removals for a variety of different baseline treatment configurations, including activated sludge systems, sequencing batch reactors (SBR), oxidation ditch systems, Schreiber reactors, and Biolac systems. For each different type of biological system, EPA identified the equipment and construction that would be necessary to achieve the long-term average concentrations (*i.e.,* target effluent concentrations) considered for each option. Upgrades could include additional reaction tanks, chemical addition requiring a mixing tank and chemical storage area, piping to provide a waste stream bypass of the anaerobic lagoon, and increased sludge handling capacity.

EPA also notes that for the proposal EPA estimated compliance costs for disinfection based on ultraviolet (UV) technology because of possible concerns with the discharge of disinfection byproducts from the treatment system. However, for today's notice, EPA is instead assuming that chlorination will be the primary means of achieving fecal coliforms limits and is thus not including disinfection costs for facilities that have any type of disinfection technology in place, and is costing chlorination for the facilities that do not. EPA is also not including costs for dechlorination technology because EPA expects that facilities with water quality based limits for chlorine and/or chlorinated by-products already have dechlorination in place and that additional limits for chlorine and/or chlorinated by-products will be rare. There are no national technology based limits for these parameters (and EPA is not proposing any). EPA solicits comment on costing for disinfection using chlorination only (without dechlorination), and information on

facilities that are or may be required to comply with limits for disinfectants and/or disinfection byproducts.

IV. Revised Pollutant Loadings and Reductions Methodology

A. Proposed Pollutant Loading Approach

For the proposal, EPA established a hierarchy using available data from sampling or detailed surveys to develop baseline loads for each of the MPP model facility groups (67 *FR* 8611). The pollutant load reductions were calculated by determining the effluent loads that would be achieved by each of the regulatory options under consideration and subtracting this value from the baseline loading. The effluent loads for the regulatory options were derived from the sampling data and combined with typical flow values for each model facility group derived from the detailed surveys.

B. Revised Pollutant Loading Approach

EPA received comments which criticized the use of the hierarchy to determine baseline loads and objected to how data was transferred to derive baseline loads for all of the model facility groups. EPA has revised the proposed approach to address these comments and to develop pollutant loadings and load reductions which are consistent with the revised costing methodology. EPA's revised assessment of pollutant loading reductions was developed on a facility level similar to the revised analysis of costs. The baseline loadings presented in this notice were developed using facility specific effluent data submitted with the detailed surveys or obtained from Discharge Monitoring Reports (DMRs) from PCS. The baseline loadings in today's notice do not incorporate the weekly/daily data from the 16 slaughtering facilities that responded to EPA's request as discussed in Section II.B but do incorporate the summary DMR data for these 16 facilities. EPA also has incorporated the results from its additional sampling episodes into its determination of pollutants of concern (POC). Based upon the new data and minor modifications to the use of pre-proposal sampling data, EPA is no longer considering *Salmonella* to be a POC for the poultry subcategories and Carbaryl to be a POC for the red meat subcategories. For facilities without monitoring information for some pollutants, EPA developed a default data set which used all data available for a subcategory (*i.e.,* all data submitted with the detailed surveys supplemented by or in combination with other information from the detailed surveys and from EPA's sampling program for this regulation). Using this data, EPA developed an average effluent concentration for each regulated subcategory (*i.e.* poultry slaughterers and red meat slaughterers) for each pollutant of concern (*See* Tables IV.B–1 and IV.B–2 below) under each regulatory option to be used in the cost and loadings methodologies. EPA notes that these average target effluent concentrations are not derived using the delta-lognormal distribution used for developing the long-term average concentrations used for calculating limitations and standards. For the final rule, EPA may use the same long term averages for estimating loadings reduction that it uses for calculating limitations and standards, and expects these values will be close to those used in the NODA analysis.

Sufficient data was available from detailed surveys and sampling episodes to allow EPA to derive default baseline concentrations for poultry slaughterers and red meat slaughterers without transferring between subcategories. For developing default concentrations for baseline loadings for independent renderers, EPA used data from 12 rendering facilities, including detailed surveys, industry submitted data, DMR data from PCS and data obtained in response to screener survey follow-up (*see* Section II.E). However, because of the general lack of data for the pollutants of concern for stand-alone poultry or red meat further processors, EPA combined baseline data from both poultry and red meat further processors. The result was one set of default baseline concentrations that applied to all further processors, regardless of whether it was a poultry or red meat further processor. EPA expects that wastewater characteristics at further processors are more likely to be dependent on the processing operation (*e.g.,* breading, frying) than on the type of meat. EPA solicits comment on the differences in wastewater characteristics at red meat and poultry further processors. *See* DCN 100767 for additional information on the default baseline concentration used for today's notice. The target effluent concentrations for each regulatory option were transferred from meat slaughterers to meat further processors and independent renderers. Similarly, the effluent concentrations for each regulatory option were transferred from poultry slaughterers to poultry further processors. For the final rule, EPA anticipates using the information collected from EPA regions and states (*See* Section II.C.1) in its development of effluent concentrations for these types of facilities. However, if data for all regulatory options is not available for the final rule, EPA anticipates data transfers as presented in this NODA. EPA notes that, based on implementation of the revised (more rigorous) approach to developing loadings, there are no pollutant reductions associated with pesticides.

IV.B–1.—AVERAGE TARGET EFFLUENT CONCENTRATIONS FOR COSTS AND LOADINGS FOR SUBCATEGORIES A–D, F–I AND J BY OPTION

[mg/L]

	Option 2	Option 2+P	Option 2.5	Option 2.5 + P	Option 4
BOD	7.00	7.00	7.00	7.00	6.45
TSS	25.10	25.10	25.10	25.10	18.65
COD	125.04	125.04	125.04	125.04	125.04
CBOD	6.00	6.00	6.00	6.00	6.00
Ammonia as Nitrogen	0.895	0.895	0.895	0.895	0.185
Total Nitrogen	N/A	N/A	34.2	34.2	13.51
Total Phosphorus	N/A	8.28	N/A	8.28	5.12
Nitrate/Nitrite	N/A	N/A	20.87	20.87	10.35
TKN	3.615	3.615	3.615	3.615	3.17
O&G (as HEM)	14.05	14.05	14.05	14.05	14.05

Note: See Section IX.A for a description of the technology options.

N/A: Not applicable because technology option is not designed to control the pollutant parameter.

IV.B–2.—AVERAGE TARGET EFFLUENT CONCENTRATIONS FOR COSTS AND LOADINGS FOR SUBCATEGORIES K AND L BY OPTION

[mg/L]

	Option 2	Option 2+P	Option 2.5	Option 2.5 + P	Option 4
BOD	8.80	8.80	8.80	8.80	7.00
TSS	10.21	10.21	10.21	10.21	5.05
COD	29.60	29.60	29.60	29.60	17.25
CBOD	6.00	6.00	6.00	6.00	6.00
Ammonia as Nitrogen	1.00	1.00	1.00	1.00	0.17
Total Nitrogen	N/A	N/A	32.40	32.40	1.86
Total Phosphorus	N/A	4.20	N/A	4.20	2.27
Nitrate/Nitrite	N/A	N/A	20.87	20.87	0.52
TKN	4.97	4.97	4.97	4.97	1.34
O&G (as HEM)	5.90	5.90	5.90	5.90	5.39

Note: See Section IV.A for a description of the technology options.
N/A: Not applicable because technology option is not designed to control the pollutant parameter.

V. Changes Considered to Applicability, Definitions, and Regulated Pollutants

A. Changes Considered to Applicability and Definitions

EPA received comment on the size thresholds in the proposed rule, as well as a request from permitting authorities to clarify the overlap between the Concentrated Animal Feeding Operations (CAFO) rule and the MPP rule. This section discusses changes EPA is considering for the final rule including: (1) Changes in the production based thresholds; and (2) clarification on the distinction between CAFOs and animal holding areas in the MPP industry.

EPA based the proposed production thresholds and its definition of ''small'' facility on available screener survey data (67 FR 8587). As discussed in Section II.E of today's notice, EPA is including additional screener surveys as well as detailed surveys in its analysis for this NODA. If EPA determines that the economic achievability, cost-effectiveness, or environmental benefits of the rule can be enhanced by revising the production-based thresholds, EPA will consider revising the thresholds for the final rule. EPA notes that although one commenter requested a higher production threshold for poultry facilities (*e.g.*, 100 million versus 10 million pounds per year) for determining applicability of the effluent guidelines limitations and standards, they did not provide any information that would serve as a basis for EPA to revise the proposed production based thresholds.

Please note that, in error, EPA also solicited comment on its use of 100 employees at the facility level for analyzing economic impacts on small businesses. In fact, EPA used the SBA size standard of 500 employees at the company level to perform its small business impact analyses for both the proposal and today's notice and will continue to do so for the final rule.

Subsequent to promulgating the final CAFO rule earlier this year (68 FR 7176; February 12, 2003), EPA received a request from permitting authorities to clarify the distinction between animal feeding operations (AFOs) and animal holding areas at MPP facilities to avoid any ambiguity about which permit requirements and effluent guidelines apply to discharges from the MPP animal holding areas. EPA's NPDES regulations at 40 CFR part 122.23(b)(1) define an AFO as ''a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of more than 45 days or more in any 12-month period, and (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.'' All meat and poultry slaughtering facilities have live animal receiving areas. Although the animals at MPPs are not typically kept or maintained for more than a day, animals are present for more than 45 days in a 12 month period. Therefore, the AFO definition could be construed to include animal holding areas at meat and poultry slaughtering facilities.

EPA does not interpret the AFO definition to include animal holding areas at meat and poultry slaughtering facilities. Furthermore, the CAFO rules do not establish requirements for MPP animal holding areas. Meat slaughtering and processing operations currently fall under the Meat Products Point Source Category at part 432. The MPP rule, as proposed, would add requirements to part 432 for poultry processing plants. Wastes from animal holding areas at MPP facilities were identified during the original effluent guidelines rulemakings in the 1970s as being part of the MPP facilities' process wastewater and the requirements at part 432 apply to these wastes. NPDES permits have historically addressed the animal holding areas at processing facilities as part of the meat processing facility rather than as an animal feeding operation. Given the effectiveness of this approach, EPA does not intend to change the applicability of the MPP rules to animal holding areas. Rather this Notice is clarifying that animal holding areas at meat and poultry slaughtering facilities are still subject to the requirements of the MPP rule codified at 40 CFR part 432 and are not subject to the NPDES CAFO requirements codified at 40 CFR part 122 or the CAFO effluent guidelines codified at 40 CFR part 412.

To avoid potential confusion, EPA may include regulatory language in the applicability section of the MPP rule clarifying that animal holding areas at meat and poultry slaughtering facilities are subject to the requirements codified at part 432 and not the CAFO requirements at parts 122 or 412, and solicits comment on this aspect of the applicability language for part 432.

B. Changes Considered to the Pollutants Selected for Regulation

Based on comments on the proposed rule, EPA is considering a revision to the pollutants it proposed for regulation (*i.e.,* Ammonia (as N), BOD_5, COD, Fecal Coliforms, O&G (as HEM), Total Nitrogen, Total Phosphorus, and TSS). EPA notes that the selection of pollutants proposed for regulation was subcategory-specific and size-specific and not all pollutants were proposed for each subcategory, facility size, or limitation type (*e.g.,* BPT, BAT). (See rule text of the proposed rule for a

specific list of proposed parameters for each subcategory; 67 FR 8657).

EPA proposed adding COD to the BPT limitations for non-small facilities (*i.e.,* based on subcategory-specific production thresholds) in Subcategories A–D and F–J to better reflect the design and operation of the existing BPT treatment technology (67 FR 8630). Commenters stated that biological treatment systems in place at meat products facilities are not designed or operated based upon COD removal and that doing so would be financially burdensome. In addition, commenters state that BOD or CBOD (carbonaceous BOD) would be a more appropriate measure for monitoring biological treatment system performance. EPA agrees that COD may not be an appropriate indicator of biological treatment technology performance at MPP facilities. Based on EPA's analysis of new data and the complete survey information, EPA is more likely to retain the current limits for BOD (and other conventional pollutants) and add total nitrogen to the BPT limitations for Subcategories A–D and F–J to reflect the partial denitrification currently occurring at many of these facilities (*see* Section IX for a discussion of options EPA is considering for BPT for the final rule). In this case, EPA would not regulate COD or CBOD in the final rule, because COD would not provide much useful information and CBOD would be somewhat redundant with the current BOD limitations and standards.

For BAT limitations, EPA is still considering the regulation of ammonia (as nitrogen) for small facilities (below the subcategory-specific production thresholds) in Subcategories A–D, F–I, and K–L and all of the facilities in Subcategory J, as proposed. Also, depending on the option EPA selects for the final rule, EPA is considering the regulation of ammonia (as nitrogen), total nitrogen, and/or total phosphorus for non-small facilities (above the production thresholds) in Subcategories A–D, F–I, and K–L, as proposed. Note that if EPA does not select a model technology for the BAT level of control that includes phosphorus removal, EPA would not regulate total phosphorus at BAT. The same holds true for the new source performance standards (NSPS).

C. Concerns Regarding Fecal Coliforms Limitations and Standards

For the proposal, EPA retained the existing limitation/standard of ''Maximum of 400 MPN per 100 ml at any time'' of fecal coliforms for BPT and NSPS for Subparts A through I (*i.e.,* red meat subcategories) and Subpart J (*i.e.,* independent rendering). In addition, EPA proposed the same fecal coliforms values for the BPT limitations and NSPS for Subparts K and L (proposed poultry subcategories). Based on analysis conducted for the proposal, EPA tentatively determined that this level was achievable by poultry facilities. As a result of the proposal, EPA received comment on several issues regarding the proposed and existing limitations and standards for fecal coliforms. This section addresses the major comments that the Agency received.

1. Reporting Units

Commenters requested EPA to allow for monitoring of fecal coliforms to be reported in units of colony forming units (CFU) per 100 milliliters (mL) in addition to the units of most probable numbers (MPN) per 100 mL specified in the existing regulations. To obtain results in units of MPN per 100 mL, the laboratory uses the multiple-tube fermentation technique. To obtain results in units of CFU per 100 mL, the laboratory uses a membrane filtration which is a direct plating method in which samples are filtered through 0.45um membrane filters that are subsequently transferred to petri dishes containing a selective or differential agar medium. Based on the research of Thomas and Woodward in ''Estimation of Coliforms Density by the Membrane Filter and the Fermentation Tube Methods'' (DCN 165320), results from either technique can be considered comparable, so long as the volume analyzed is equivalent. This finding of comparability is consistent with documentation for the existing fecal coliforms limitations and standards (*see*, for example, page 154 of the 1974 development document for the renderer segment (EPA 440/1–74/031–a) where EPA states ''This method [membrane filter procedure] and the multiple-tube technique which results in a MPN (most probable number) value, yield comparable results.''). Therefore, EPA is considering revising the limitations and standards to allow for results to be reported in either MPN units or CFU units per 100 ml. EPA solicits comment on this possible revision.

2. Impact of UV Technology

Several commenters were concerned with the industry's ability to consistently achieve the existing and proposed fecal coliforms limitation/standard of 400 MPN/100 ml at ''any time'' with the use of ultraviolet radiation (UV) technology. Some facilities are using this technology as an alternative to treatment using chlorination which is itself associated with some environmental concerns. As discussed in Section III.B, for the proposal, EPA estimated compliance costs for disinfection based on UV technology. However, for today's notice, EPA is not including costs for facilities that have any type of disinfection technology in place and is costing chlorination for the three facilities that do not currently have any type of disinfection. The model technology does not include a dechlorination step. For the final rule, EPA intends to evaluate the achievability of the fecal coliforms limitation/standard using UV treatment. In its preliminary review, EPA is investigating whether the samples are likely to be extremely turbid for which UV treatment would not sufficiently kill fecal coliforms without agitation during the treatment step. As part of its preliminary review, EPA considered its sampling episode data from the facility with UV technology (episode 6486). This review showed that discharges of fecal coliforms are well below the current limitation/standard, because the concentrations ranged from non-detected to a measured value of 166 MPN/100 mL. For the final rule, EPA intends to further review these sampling episode data and to consider the self-monitoring data from facilities that use UV technology. EPA solicits comments and data on UV performance and costs for reducing fecal coliforms in MPP wastewaters. EPA also solicits comment on the extent to which water quality standards are driving the MPP industry to shift from chlorination/dechlorination to UV to achieve water quality standards for chlorine and whether this shift necessitates a revised fecal coliforms limit that is consistently achievable with UV technology.

3. Holding Times of EPA Sampling Data

As explained in Section II.A.2, when EPA conducted its own sampling episodes at the facilities, it exceeded the required holding time for some samples for fecal coliforms. DCN 165310 in Section 22.6 of the public record lists the holding times and fecal coliforms measurements from the EPA sampling episodes.

For red meat facilities, where EPA is retaining the previously promulgated limitations and standards, EPA is considering using the fecal coliforms data from the EPA sampling episodes for some analyses such as (1) calculations for loadings and (2) evaluation of treatment performance by comparing influent and effluent data. For the treatment technologies that EPA is currently considering, all of the red meat data from sampling episodes are associated with holding times of about

24 hours. Based on the results of the holding time study (*see* Section II.A.2 above), EPA is considering using the 24-hour data for these analyses. Note that EPA does not intend to revise the current limitations and standards for red meat facilities, and thus, is not using these data to develop limitations and standards for fecal coliforms. EPA requests comment on the use of the 24-hour holding time data for analysis of loadings and treatment performance at red meat facilities.

For poultry facilities, where EPA is transferring the existing limitations and standards from the red meat subcategories, EPA will only use data associated with the 8-hour holding time for its loading analysis because the holding time study indicated that longer holding times for poultry processing wastewaters were not comparable to the 8-hour period. Because only one sampling episode (6304) meets this criterion, EPA will base its loadings and other analyses on fecal coliforms data from this single sampling episode and any appropriate self-monitoring data. EPA will also use these data in evaluating the achievability of the limitations that EPA intends to transfer from the existing limitations for the red meat subcategory. EPA requests comment on the transfer of limitations for the poultry subcategory from the red meat subcategory, and on its planned use of data to analyze loadings and treatment performance.

4. Extending Holding Times in 40 CFR Part 136

As discussed in the preamble to the proposed rule (67 FR 8631), EPA planned to conduct the holding time study for two purposes: to evaluate the use of data in developing loadings estimates and limitations/standards, and for possible revisions to current holding time requirements. The previous section addresses EPA's intended use of the data for developing loadings estimates. Because the study collected data from only three facilities in the MPP industry, EPA does not consider the study results to provide a sufficient basis to revise the holding times specified in 40 CFR part 136 which apply to all industries.

5. Monitoring of Both Fecal Coliforms and *E. coli*

As part of its evaluation of the existing guidelines, EPA has reviewed its use of fecal coliforms as a regulated parameter. On page 68 of the1974 development document for the renderer segment (EPA 440/1–74/031–a), EPA explained that it selected fecal coliforms as an indicator parameter because ''they have originated from the intestinal tract of warmblooded animals. Their presence in water indicates the potential presence of pathogenic bacteria and viruses.'' However, EPA subsequently issued a guidance document for water quality criteria that recommends the monitoring of *E. coli* or enterococci rather than fecal coliforms in recreational waters. (*See* ''Ambient Water Quality Criteria for Bacteria—1986,'' January 1986, EPA440/5–84–002.)

While EPA has not validated an analytical method for *E. coli* in industrial wastewaters, which consist of considerably more complex matrices than ambient waters, it has analyzed for *E. coli* in MPP wastewaters using Standard Method 9221F and this appears to have provided reasonable estimates of the *E. coli* concentrations, based upon EPA's evaluation of the laboratory reports. However, EPA does not consider these data to be appropriate to use in developing limitations and standards for *E. coli.* Instead, EPA considers the *E. coli* data to be appropriate for general comparisons of *E. coli* and fecal coliforms concentrations in MPP wastewaters. For the pork and beef facilities in the holding time study, the *E. coli* and fecal coliforms concentration values were identical. For the effluent from the sampling episodes corresponding to the model technologies, the values of *E. coli* and fecal coliforms are identical for most samples. Thus, because fecal coliforms and *E. coli* in MPP effluent generally have similar concentration values, EPA continues to consider that fecal coliforms prove a reliable indicator parameter for *E. coli.*

While EPA considers fecal coliforms to be the appropriate parameter for regulation for the MPP industry, EPA recognizes that some states and tribes may still prefer that facilities monitor directly for *E. coli.* Because concentrations of fecal coliforms and *E. coli* are similar, EPA is considering an alternative that would allow facilities to monitor for *E. coli* instead of fecal coliforms in the effluent. This alternative would be available when EPA amends 40 CFR part 136 to include an analytical method for *E. coli* in industrial effluent. EPA expects to promulgate such a method in the next few years. EPA is currently conducting validation studies of this method, and expects to propose this method in 2004.

In this alternative, EPA would allow a facility to monitor for *E. coli* rather than fecal coliforms after the facility certified that the concentrations of the two parameters were similar in the final effluent. As part of the application process for this certification, the facility would be required to submit data demonstrating the similarities of concentrations of fecal coliforms and *E. coli* in its facility's wastewater over an extended period of time (perhaps a month or longer). If the permit authority determined that the *E. coli* concentrations had values that, on average, were greater than some ''cutoff'' percent (for example, 75 or 90 percent) of the fecal coliforms concentration values, then the certification would allow the facility to monitor for *E. coli* rather than fecal coliforms. In this instance, the permit would contain an *E. coli* limitation/standard set equivalent to the same numerical value as the existing fecal coliforms limitation/standard for that facility. If the *E. coli* concentration values, on average, were lower than the cutoff percent of the fecal coliforms concentration values, then under this possible approach the permitting authority would be able to establish a limitation/standard for *E. coli* in place of fecal coliforms only if the numerical value for the *E. coli* limitation/standard in the facility's permit would be reduced by an appropriate amount from the fecal coliforms limitation/standard for that facility. Note that EPA is not proposing to set national limitations for *E. coli,* because EPA lacks the data necessary to set such limitations. EPA believes, however, that the alternate approach discussed here could avoid the need to monitor for both *E. coli* and fecal coliforms in cases where the permitting authority believes *E. coli* is the more appropriate indicator.

EPA solicits comment on this alternative and the specifications it is considering. EPA also solicits comments on whether this alternative would be beneficial for facilities, even though facilities could not use this method until EPA has adopted an approved method for *E. coli* in industrial effluent. Note that EPA is not proposing to set national limitations for *E. coli* as part of the MPP rule, because EPA lacks the information necessary to set such limitations at this time.

D. Concerns About Total Nitrogen Limitations and Standards

At the time of proposal, EPA expressed a tentative view that limits based on the performance of poultry products facilities could also be achieved by meat products facilities. EPA received comment from industry stakeholders indicating that the relative proportions of nitrogenous BOD and carbonaceous BOD differ in poultry wastewaters from red meat wastewater.

Because of these differences, commenters were concerned that it would be inappropriate to transfer total nitrogen limitations from poultry to red meat subcategories. Based on the evaluations discussed below, EPA is considering transferring total nitrogen limitations from poultry to red meat subcategories for the final rule.

EPA has performed a comparison of the poultry and meat processing wastewaters after anaerobic lagoon treatment (*See* DCN 100765). In this comparison, using data from surveys and sampling episodes, EPA evaluated parameters which are commonly used to determine the characteristics of wastewater for biologically-based treatment systems. These parameters included 5-day biochemical oxygen demand (BOD), chemical oxygen demand (COD), oil and grease, nitrogen, phosphorous, and total suspended solids (TSS) as well as biokinetic parameters (*i.e.,* maximum specific growth rate, the half saturation constant, decay rate, and yield coefficient). EPA concluded that wastewater strength and biodegradation rates of poultry processing wastewater and meat wastewater are similar and fall within the same general ranges (*e.g.,* the average concentration for COD in the poultry processing wastewater was approximately 851 mg/L compared to 961 mg/L and for meat processing wastewater). However, EPA found the average TKN and ammonia concentrations of meat processing wastewater are somewhat higher than those of poultry processing wastewater (*e.g.,* 265 mg/L TKN for meat compared to 109 mg/L TKN for poultry; 162 mg/L ammonia for meat compared to 54.5 mg/L for poultry). Nitrogen in poultry processing and meat processing wastewaters after anaerobic treatment is primarily present as ammonia. Since the substrate in both types of wastewater is the same and the nitrification systems are universal, it is reasonable to apply treatment systems used for nitrifying poultry wastewater may to meat processing wastewater. However, higher ammonia and TKN concentrations in meat wastewater after anaerobic treatment may warrant modifications in design and operational characteristics of the treatment system; therefore, EPA has included costs for such modified design and operational characteristics when estimating compliance costs for meat products facilities. For example, higher TKN can result in a BOD:TKN ratio that is lower than what is needed to achieve denitrification and, as discussed in Section III, EPA has included costs for an additional carbon source such as methanol, when appropriate, to achieve the needed BOD:TKN ratio.

EPA notes that treatment systems for BOD removal, nitrification, denitrification, and phosphorus removal systems are universal. This observation is consistent with our review of treatment systems of both industries which reveals that many of the treatment processes used to treat poultry processing wastewaters are also used to treat meat processing wastewaters. Thus, EPA expects that many of the same modifications to existing poultry processing plants for enhancing biological nutrient removal can be used for meat processing wastewater treatment options. However, EPA recognizes that when meat processing facilities incorporate these enhancements specific operating parameters and treatment effectiveness may be different than for poultry facilities, depending on the specific characteristics of the influent wastewater. EPA requests comments and data that would help to establish the differences and similarities between poultry and meat processing wastewater, and the implications of these similarities and differences for the relative treatability of each.

In its consideration of the total nitrogen reductions, EPA thought that Ultimate BOD (UBOD) analyses performed on wastewater from poultry and meat facilities could be used to determine whether the carbonaceous and nitrogenous portions in BOD are similar (or not) at the two types of facilities. While EPA has not yet fully evaluated this, EPA collected samples and conducted UBOD analyses (using Standard Method 5210C and EPA Method 353.1) in samples of raw wastewaters and treated effluents from one poultry and one meat facility. From the poultry facility (episode 6493), EPA analyzed UBOD in eight samples collected on two sampling days at four sampling locations. From the meat facility (episode 6496), EPA analyzed six samples collected on three days at two sampling locations. The analysis of UBOD provides measurement of dissolved oxygen (DO), nitrate/nitrite, CBOD, and nitrogenous BOD (NBOD) in a sample over a period of 25 days. (NBOD is calculated by applying a multiplier of 4.57 to the nitrate/nitrite concentration value.) For each sample, there are 16 measurements of each parameter as a result of analyzing aliquots every day for the first five days and every other day until the end of the 25-day time frame. EPA will use these measurements, located at DCNs 165460 and 165470, to evaluate the degradation rates of BOD and nitrification in the wastewaters. To evaluate these rates, EPA intends to compare the general pattern of the degradation curves for the samples for each facility. However, EPA is concerned that the UBOD data for the poultry facility may be minimum values, because total DO depletion occurred on one or more days for all samples, which would artificially limit measured BOD on subsequent days. Thus, EPA is not sure how useful this analysis will be in comparing poultry and meat processing wastewaters. EPA requests comment on this issue.

EPA may also use the UBOD data to evaluate some other aspects of its costing model. For example, for some facilities it was necessary for EPA to estimate aerobic volume; in order to do this, EPA needed both BOD degradation and nitrification rates. For these estimates, EPA derived default biodegradation rates based on literature and some limited data submitted as part of the MPP detailed survey. EPA may be able to use the UBOD data to evaluate the estimates of the biodegradation rates and to develop any appropriate adjustments for MPP wastewaters.

EPA solicits comments on its initial comparison of poultry and meat processing wastewaters. In addition, because industry representatives have expressed some concerns about the applicability of UBOD analyses to total nitrogen performance, EPA solicits comments on the appropriateness of using the UBOD data to determine total nitrogen performance in the two subcategories and whether other information would be more relevant. EPA also solicits comments on the applicability of the UBOD data for estimating BOD biodegradation rates and nitrification rates for use in its cost model. Further, EPA solicits additional data on UBOD in raw wastewaters.

E. Data Selection for Oil and Grease Loadings and Limitations/Standards

The proposed limitations for oil and grease were based upon data from EPA sampling episodes. For these samples, EPA used EPA Method 1664 to measure the oil and grease concentrations. Method 1664 uses normal hexane (n-hexane) as the extraction solvent, instead of Freon which is an ozone-depleting agent. Because EPA had developed its proposed limitations using Method 1664 data, it expressed the limitations as oil and grease measured as n-hexane extractable material (HEM). (Defined at 67 FR 8658).

EPA also had two other reasons for expressing the limitations as HEM. First, there are environmental concerns associated with the older methods that

use Freon, which is an ozone-depleting agent. Second, EPA expects that facilities will choose to use Method 1664 in the future rather than Freon methods, because Freon is expected to become more expensive and difficult to obtain. For these two reasons, EPA expects to promulgate the final limitations for ''oil and grease measured as HEM.'' As a consequence, compliance monitoring would require the use of a method, such as Method 1664, that measures oil and grease as HEM.

With the incorporation of industry self-monitoring data, EPA now has oil and grease concentration data measured by Freon methods. Because these data do not measure oil and grease as HEM, EPA has excluded them from its analyses and loadings estimates for the NODA. However, EPA acknowledges that at the time of development of Method 1664, EPA had explained that Method 1664 and Freon methods generally provide comparable results for industrial wastewaters (*see,* for example, *http://www.epa.gov/waterscience/methods/1664fs.html*). However, during the development of Method 1664 and subsequently, some industries have expressed concerns about potentially differing results from the two methods. In response to these comments, EPA has provided guidance for facilities to evaluate if the two methods are comparable in their own wastewater. (See chapter 2 in ''Analytical Method Guidance for EPA Method 1664A Implementation and Use (40 CFR part 136),'' February 2000, EPA/821–R–00–003; DCN 165620). EPA solicits data from any MPP facilities that may have performed this comparison in the MPP wastewaters.

Before the final rule, EPA may assess whether the oil and grease data between the two methods appear to differ within the same model technology options. (*See* DCNs 165011, 165140, 165070, 165150 for the data and summary statistics.) Further, if data from both a Freon method and Method 1664 are available from the same facility, then EPA intends to compare the concentrations from the two methods for that facility. Depending on the results of these comparisons, EPA may incorporate the Freon-based data into its development of the final limitations/standards for oil and grease. In this case, EPA would also consider allowing the use of Freon-based methods for compliance monitoring. EPA solicits comments on whether it should use only Method 1664 data in calculating its loadings and final limitations/standards for oil and grease measured as HEM.

VI. New Information and Consideration of Revisions to Economic Methodologies

A. Closure Analysis

For the proposed rule, EPA projected facility level economic impacts using a probability model derived from Census data because detailed survey financial information was not available at proposal. See Section II.E for discussion of incorporation of additional survey information. However, in the Economic Analysis (EA) document supporting the proposal, EPA presented the economic impact methodology it intended to use for the final rulemaking. EPA received several comments recommending modification to this methodology. EPA intends to use the methodology proposed for the final rulemaking with some modifications in response to these comments. Additionally, EPA may use some Census data to perform analyses in subcategories for which adequate detailed survey data are not available. Based on comments and incorporation of additional data, EPA is considering revisions to the proposed economic analysis methodology in the following areas: projection of future facility income, tax shields, and company level aggregation and closure analysis. The revisions that EPA is considering are discussed below.

1. Forecasting Future Facility Income

For the proposal, EPA stated it would use the survey period, 1997 to 1999, as the baseline for projecting facility and company net income for use in the closure model. Commenters objected to the use of this period as the baseline because unusual supply and demand conditions resulted in unusually large margins for meat companies, and therefore, atypically profitable years.

EPA concurs with this assessment. To address these concerns EPA developed a forecasting model that uses historical data on the periodic cycles of the relevant markets to generate an index. This index is used to forecast net income for MPP facilities, accounting for cyclical effects on profits. EPA has used this model for the analyses in today's notice and is considering its use for the final MPP rule.

In the red meat sectors, EPA used U.S. Department of Agriculture's Economic Research Service (USDA/ERS) time series on the monthly farm-to-wholesale price spread to develop its margin forecast. To forecast the margin in the poultry sector, EPA developed a new monthly time series by subtracting the USDA/ERS broiler wholesale production cost time series from its broiler wholesale price time series. These time series, which ran from 1970 to 2002 for beef and pork, and from 1990 to 2002 for poultry, were converted to constant 1999 prices. To deseasonalize each time series, EPA calculated each month's value as the average price spread for a 12 month period centered on that month (*i.e.*, a 12-month centered moving average). The price spread time series were deseasonalized because each series reflects cyclical behavior within each year as well as over longer time periods (*e.g.*, each year the demand for turkey peaks in November and December). Deseasonalizing the farm-to-wholesale price spread time series data set enables EPA to focus on the longer-run cycles.

From the time series data for each sector, clear, consistent cycles were readily identifiable. EPA used these cycles to develop a ''normal'' or ''average'' cycle for each meat type. To test the validity of the normal cycle pattern, the normal cycle was used to remove the cyclical component (de-cycle) from the moving average time series for the farm-to-wholesale price spread. After de-cycling, these time series showed only random variation and the general trend of the original series, indicating that the cyclical variation in these data sets had been successfully captured by the model. The cycles were then used to forecast the wholesale margin for the 2003 to 2018 time period. Complete details of the methodology used to measure and forecast the wholesale margin cycles are provided in the docket (*see* Section 21.2, DCN 125502).

EPA used the historical and projected wholesale margin time series to develop indices. These indices are applied to survey net income data to forecast facility and company earnings for use in the closure model. Net income was projected to vary directly with the farm-to-wholesale price spread; as the spread narrows, net income declines. As commenters pointed out, the 1997 to 1999 survey period was at or near the peak of a cycle, and as a result net income could be expected to decline as industry moved toward the cycle trough. Therefore, EPA selected cycle high points (largest annual margin) for the base period of its indices. Index values for succeeding years were calculated as the proportion of each year's margin to the base period margin.

In addition, EPA had to select a starting value for net income to which the indices are applied. EPA ran a series of net income projections. Each run used a different combination of net income starting point and cycle index. From these combinations, EPA selected

the following five projection methods for net income:

- Using a simple average of 1997, 1998, and 1999 net income projected over the 15 year project life to provide an unsophisticated baseline;
- Using 1999 net income as the start point for projections using Cycle 1 in Table VI.A.1 (index initial value is 1999);
- Projecting three different net income time series, all using Cycle 2 in Table VI.A.1 (index initial value is the largest margin in the 1995 and 2002 period), but starting from different detailed survey data points: maximum, average, and minimum facility net income.

As described in the proposal EA (Section 3.2.2), EPA uses the preponderance of evidence under different forecasting methods to determine if a facility is projected to close. Because EPA intends to use five forecasting methods for the final rule, a facility is projected to close if the present value (PV) of future compliance costs exceeds the forecast PV of net income under three of the five forecasting methods. EPA notes that the results of these five methods are not independent and is considering basing its closure analysis for the final rule on a subset of these methods. EPA solicits comment on this forecasting model for future facility income in the MPP industry.

As a sensitivity analysis, EPA also projected closures if the PV of future compliance costs exceeds the forecast PV of net income under one of the five forecasting methods. The results of this sensitivity analysis can be found in the docket at DCN 125607.

TABLE VI.A.1.—BUSINESS CYCLE INDICES FOR FORECASTING NET INCOME

Cycle 1				Cycle 2		
Year 1 of Cycle Equals 1999				Year 1 of Cycle Equals High Point of 1995–2001		
Year	Beef	Pork	Broilers	Beef	Pork	Broilers
1	1.00	1.00	1.00	1.00	1.00	1.00
2	1.05	0.84	0.79	0.96	0.84	0.81
3	1.05	0.84	1.64	0.94	0.84	0.63
4	1.01	0.83	1.15	0.98	0.83	0.95
5	0.99	0.87	1.04	0.86	0.87	0.61
6	1.03	0.79	1.61	0.83	0.79	0.48
7	0.91	0.67	1.20	0.86	0.67	0.99
8	0.88	0.66	1.04	0.91	0.66	0.70
9	0.90	0.79	1.61	0.80	0.79	0.63
10	0.96	0.77	1.20	0.76	0.77	0.97
11	0.85	0.65	1.04	0.78	0.65	0.73
12	0.80	0.60	1.61	0.83	0.60	0.63
13	0.82	0.70	1.20	0.75	0.70	0.97
14	0.88	0.75	1.04	0.70	0.75	0.73
15	0.79	0.63	1.61	0.70	0.63	0.63
16	0.73	0.56	1.20	0.75	0.56	0.97

2. Tax Shields

EPA received comments on its methodology for estimating investment tax shields on new wastewater treatment technology. One comment pointed out that EPA's methodology apparently failed to deduct interest payments from the revenue base used to determine the tax rate applicable to tax shields, though it did subsequently subtract out interest payments to yield net income. This could produce an overestimate of the tax shields the company accrues on its investment in wastewater treatment equipment. EPA agrees with this commenter, and for the analysis supporting this notice has subtracted interest payments from earnings before interest and taxes (EBIT) to determine both taxable income and the applicable tax rate.

A second comment on EPA's method for estimating tax shields stated that EPA's methodology would overestimate tax shields if incremental compliance costs decrease earnings before taxes to such an extent that a facility's marginal tax rate changes. EPA examined estimated compliance costs and net income for each facility, and found that in practice there would be no effect on estimated tax shields. In the vast majority of cases, no change in tax rates would result given the magnitude of projected compliance costs. For one facility where the tax rate could have changed due to the incremental compliance costs, EPA's method of limiting estimated tax shields so they cannot exceed taxes actually paid resulted in a smaller estimated tax shield than if EPA estimated its tax shield by incorporating the change in rates.

3. Aggregation of Company Level Costs and Company Level Closure Analysis

Following proposal, EPA completed review of the detailed surveys (see Section II for discussion on completion of survey review). Less than 40 percent of direct discharging facilities provided facility level financial data in the detailed survey. Industry has stated that many companies in the MPP industry do not maintain financial records at the facility level. Instead they maintain their financial records at, for example, the company level, division level or product line level. As a result, EPA was unable to scale up its facility level closure analysis to produce a national-level projection of closures. Rather, for each facility for which there was sufficient data, EPA recorded the closure status of the associated number of facilities as ''unknown.''

EPA did collect company level financial data and when necessary this data can be supplemented using publicly available data. Therefore, EPA is considering a closure analysis at the company level in addition to the facility level analysis and has performed that analysis for today's notice (see Section VI for estimated economic impacts). This requires EPA to estimate compliance costs at the company level as well as the facility level. The Altman Z' analysis, described in the proposal EA (Section 3.1.3.2) document, is also a company level analysis and so EPA used the same method for estimating company level costs for both models.

The company level closure analysis is identical to the facility level closure analysis in that EPA projects the net present value (NPV) of each company's net income over the 15 year project life. Salvage value is assumed to equal zero, as proposed, for the reasons described in DCN 125505. EPA excludes salvage value from the closure analysis because academic studies and EPA experience on previous projects both demonstrate that it is extremely difficult to estimate accurately. Therefore, inclusion of salvage value would add a highly arbitrary component to the closure analysis. The NPV of projected compliance costs is subtracted from the NPV of projected net income; if this value is positive, the company is deemed to remain open, if this value is negative, the company is projected to close, with associated losses in output and employment.

To estimate company level compliance costs, EPA reviewed the 55 non-small detailed survey direct discharging facilities to determine their corporate parent, then compiled a list of all other meat processing facilities owned by each of those corporate parents. EPA primarily relied on the screener survey and the PCS database to estimate the number of direct discharging facilities owned by these corporate parents that were not represented in the detailed survey database. EPA estimates that the 26 corporate parents of those 55 direct dischargers owned about 345 MPP facilities in 1999. EPA then determined the discharge status of these 345 facilities because indirect discharging facilities will not incur costs under this regulation, and estimated that of the 345 facilities owned by these corporate parents, approximately 125 were direct dischargers. Of these 125 direct dischargers, 55 received detailed surveys, and 70 required analysis based on non-survey data.

To estimate compliance costs attributable to the 70 non-surveyed facilities, EPA applied mean compliance costs by meat type (red meat or poultry) to each non-surveyed facility. EPA examined alternative means of allocating compliance costs to these facilities, such as matching costs from detailed survey facilities based on meat type and processes performed. EPA determined that applying average costs by meat type to non-surveyed facilities resulted in more conservative (*i.e.*, higher) cost estimates. See DCN 125501 for additional information on the estimation of non-surveyed direct discharge facilities. EPA solicits information on the actual number of non-surveyed direct discharging facilities that are owned by each parent company identified and the production type of these facilities (*e.g.*, first processor, further processor, renderer). EPA notes that, for the final rule, it is considering using a company-specific mean compliance cost if additional financial data is received in response to today's notice. EPA did not attempt to scale up the projected company closures to correspond to a national estimate because EPA lacks data on which to base sample weights for the 26 companies. Thus, the company level analysis reflects closures only among the 26 companies analyzed. EPA made an effort to determine whether there are additional companies that own direct discharging MPP facilities and found three additional companies based on the screener survey results that may own direct discharging MPP facilities. Therefore, the company level analysis could underestimate the number of company closures nationally. EPA solicits comment and information on the presence of additional companies that have facilities within the scope of the MPP rule.

In addition, EPA solicits comment on the aggregation of facility level compliance costs to the company level, and the use of a company level closure analysis. In addition, EPA solicits comment on the methodology used to estimate compliance costs for the closure analysis for the 70 non-surveyed facilities which are owned by the same parent companies as the 55 detailed survey recipients.

B. Trade Elasticity Methodology

Commenters on the proposed rule raised concerns over EPA's assessment of foreign trade impacts for poultry facilities. Specifically, the commenters stated that EPA did not adequately address the impact of the proposal on poultry exports. Based on these comments, EPA has reviewed its methodology and is considering revising it for the final rule.

For the proposed rule, EPA analyzed trade impacts through the international trade component of EPA's MPP market model. The primary determinant of trade impacts are the trade elasticities specified for the model. EPA derived its trade elasticities based on Armington's framework in which one country's meat products are an imperfect substitute for those of other countries. After review of the proposal model, EPA is considering revising its derivation of trade elasticities for the final rule, and is using the revised trade elasticities for the analyses supporting today's notice. EPA also examined but rejected an alternative derivation of trade elasticities based on Orcutt's framework in which each country's meat products are perfect substitutes for those of any other country for the reasons described below.

EPA selected the Armington specification based on the fact that the U.S. both imports and exports meat products. If U.S. consumers consider U.S. meat products and foreign meat products to be perfect substitutes, there would be no reason to simultaneously import and export these products. This intuitive explanation is supported by econometric evidence (Galloway, *et al.* 2000). In addition, analysts have observed that U.S. poultry exports are largely composed of dark meat which is considered inferior by U.S. consumers but is preferred by foreign consumers (Aylward, 2002; Salin *et al.,* 2002; Standard & Poor's, 2000). Thus, EPA determined that the Armington framework is conceptually more appropriate for modeling trade in meat and poultry products than a framework that treats all meat products as perfect substitutes.

EPA used Armington's (1969a, 1969b) expressions for partial and cross-price elasticities of demand for a traded product to derive trade elasticities for meat products. The key data points for this estimation are: (1) The price elasticity of domestic demand for meat products regardless of the country of origin, (2) relative trade shares between the home country and its trading partner(s), and (3) the elasticity of substitution between each country's meat products. EPA found suitable econometric estimates of the elasticity of substitution, and adequate data for estimating trade shares (*see* Section 3.1.4 and Appendix C of the proposal EA).

For the proposed rule, EPA indirectly derived the price elasticity of U.S. demand for meat products regardless of the country of origin from the price elasticity of U.S. demand for meat products of U.S. origin (assumed to equal the U.S. domestic price elasticity of meat demand) using Armington's equations in repeated substitutions. In the revisions being considered by EPA, the Agency uses the U.S. domestic price elasticity of meat demand as a direct proxy for the price elasticity of U.S. demand for meat products regardless of the country of origin. This is more consistent with the econometric studies used to estimate the U.S. price elasticity of meat demand; such studies do not typically distinguish country of origin in measuring U.S. retail meat purchases. Details of EPA's derivation of trade elasticities may be found in the docket (DCN 125503).

Table VI.B.1 summarizes EPA's estimated trade elasticities under the methodology used for proposal and for the revised methodology described above.

TABLE VI.B.1.—ESTIMATES OF ARMINGTON TRADE ELASTICITIES FOR THE MPP MARKET MODEL

	Import elasticities [a]		Export elasticties [b]	
Meat type	Proposal [c]	Revised	Proposal	Revised
Beef	0.9588	1.9994	−1.5584	−1.5316
Pork	0.8519	1.3337	−1.5745	−1.5711
Broilers	0.8767	1.1458	−1.2017	−1.1903
Turkeys	0.7145	1.1600	−1.1865	−1.1557

[a] The percent change in U.S. demand for rest of the world (ROW) meat products resulting from a one percent change in U.S. price.
[b] The percent change in ROW demand for U.S. meat products resulting from a one percent change in U.S. price.
[c] In reviewing the trade elasticities used for proposal, EPA found an error in its calculation. Therefore the trade elasticities presented in this table differ from those used in the proposal economic impact analysis.

Based on the preferred option at the time of proposal (BAT 3), EPA compared trade impacts using the proposal elasticities and the revised elasticities. Annual imports were projected to be larger using the revised elasticities. Beef imports were 1.5 million pounds per year larger (a difference of 0.001 percent) under the revised elasticities; pork imports were about 280,000 pounds per year larger, while poultry imports were less than 20,000 pounds per year larger. Exports were slightly smaller using the revised elasticities. Beef exports were projected to be about 160,000 pounds per year smaller; the difference in pork and poultry exports was less than 100,000 pounds per year for each product. The difference in export projections is less than 0.006 percent of baseline. Revised estimates of market impacts including export and import quantities under the modified options using revised cost estimates are presented in Table X.A–7. EPA solicits comment on its revised trade elasticity methodology.

VII. Changes to EPA's Environmental Assessment

EPA received comments on the methodologies used to estimate MPP pollutant loadings and those used to estimate environmental benefits associated with the proposed regulatory options. At proposal, EPA based its estimates of monetary benefits of the rule on the suitability, as determined by concentrations of four specific water quality variables, of affected waters for a range of recreational uses (boating, fishing, and swimming). EPA employed the National Water Pollution Control Assessment Model (NWPCAM) version 1.1 to derive its benefit estimates. Ecological effects such as habitat degradation were noted but not quantified to avoid double-counting benefits derived using NWPCAM version 1.1.

Based on public comments received on the proposal and as discussed in the proposed rule, EPA is considering possible revisions to its approach as described in more detail below. Briefly, these revisions include (1) inclusion of nitrate and phosphate in the water quality variables modeled by NWPCAM to estimate the water quality index (WQI); (2) use of alternative or supplemental environmental models to more thoroughly characterize the environmental benefits of the regulation; (3) improvements to the algorithm relating changes in water quality to households' willingness to pay for improved water quality; and (4) consideration of other benefit categories (*e.g.,* reduced adverse human health effects from consuming fish and water contaminated by toxic compounds in MPP effluents; reduced costs of treatment associated with lower total suspended solids (TSS) loads in community water systems' (CWSs) intake water; reduced episodic fish kills resulting from discharges from MPP facilities; and a Regional Vulnerability Assessment (ReVA) that was designed to predict future environmental risk and support informed decision-making and prioritization of issues for risk management). EPA may consider other approaches for estimating benefits that are not specified in this NODA but may be a result of comments on today's notice. Note that revised results based on these methodological changes are not yet available, but will be placed in the record for this rulemaking as they become so. To the extent practicable, EPA will consider public comment on these results, even if filed after the comment period for the NODA, as it prepares the benefits analysis for the final rule.

A. Water Quality Modeling: What Changes and Information Are Being Considered?

1. National Water Pollution Control Assessment Model (NWPCAM)

EPA used NWPCAM version 1.1 to estimate environmental impacts to surface water quality resulting from implementation of the proposed rule. NWPCAM version 1.1 modeled instream concentrations of dissolved oxygen (DO), total Kjedahl nitrogen (TKN), biochemical oxygen demand (BOD), TSS, and fecal coliforms (FC). Four of these indicators (DO, BOD, TSS, and FC) were combined to generate a water quality index (WQI–4). The WQI is a 0 to 100 scale structured so that each water quality parameter is weighted to reflect its significance in determining the suitability of water for progressively more demanding uses. Changes in the WQI–4 were converted to monetary values based on a contingent valuation survey (Carson and Mitchell, 1993). Commenters remarked that this approach was an over-simplification because it may have ignored several other classes of pollutants discharged from MPP facilities including nitrogen (N) and phosphorous (P). For more details about valuation of water quality, see Section VII.B of this NODA.

NWPCAM version 1.1, used for the proposal, does not model nutrients discharged by MPP facilities. Since proposal, EPA has developed NWPCAM version 1.6 which simulates concentrations of the nutrients, nitrogen and phosphorus. Since the updated model addresses two additional components of wastewater discharges from MPP facilities, EPA is considering using the updated model to estimate the water quality change and the associated monetized benefits for the final MPP rule. Commenters also had concerns about the missing sources of loadings in the model, especially nonpoint and

minor point sources that were not captured in NWPCAM version 1.1. NWPCAM version 1.6 models water quality using a stream reach network with greater resolution and incorporates additional point and nonpoint source loadings.

The NWPCAM version 1.6 generates a water quality index (WQI–6) from six indicators of water quality (TSS, DO, BOD5, FC, nitrate (NO_3^-), and phosphate (PO_4^{3-})). The weights on individual water quality parameters are adjusted from WQI–4 to reflect the increased number of parameters in WQI–6. The new WQI–6 is a broader measure of water quality and is expected to provide a better representation of changes in water quality downstream of MPP facilities. A version of NWPCAM capable of simulating nitrogen and phosphorus concentrations and employing the WQI–6 is described in EPA, 2002.[1]

EPA solicits comment on the use of the six-parameter Water Quality Index (instead of the four-parameter Index) to assess the environmental improvements from revising the current MPP regulation. In particular, EPA solicits comment on the inclusion of nitrogen and phosphorous in the kinetics model.

EPA is considering the use of National Water-Quality Assessment Program (NAWQA) data to calibrate the baseline predicted by NWPCAM version 1.6 for the stream reaches associated with MPP facilities. EPA proposes to download NAWQA data for as many of the regions where MPP facilities are located as possible. Based on the comparison of NAWQA vs. NWPCAM version 1.6 data, EPA plans to estimate the prediction errors for each region using the NAWQA data and use the errors to adjust the NWPCAM results in each region. EPA then plans to generate a probability distribution for the errors for each parameter and then set up a Monte Carlo program to simulate variability in the water quality index as a function of NWPCAM uncertainty for all parameters at once. EPA solicits comment on the use of NAWQA data to calibrate the baseline, and solicits other sources of data to use in the calibration effort.

2. Site-Specific or Watershed-Specific Models

In order to more comprehensively simulate detailed water quality and aquatic ecosystem responses to MPP loadings and loading reductions, EPA is considering the use of other available models to evaluate the effects of nutrients and pollutants on receiving waterbodies from individual representative MPP facilities at a more site specific level either in lieu of or in addition to NWPCAM. In particular, the Agency is investigating the use of a simulation model for aquatic ecosystems (AQUATOX), an enhanced stream water quality model (QUAL2E), and the Better Assessment Science Integrating Point and Nonpoint Sources (BASINS) model. One advantage of using these models is their capacity to predict impacts of nutrient inputs on dissolved oxygen through eutrophication. Detailed information on each of these models can be found at *http://www.epa.gov/waterscience/wqm/*. Output from these candidate models could be used to qualitatively and quantitatively illustrate potential water quality and aquatic ecosystem responses to MPP loads and load reductions, or could be used in conjunction with environmental benefits valuation methods to estimate monetized benefits of MPP loads reductions. For example, water quality output from one or more of these models could be used as the basis for the calculation of the WQI–6 described above, and subsequent monetization. Alternatively, other output parameters from these models, such as levels of rough, forage, and game fish, could be used as the basis for other monetization approaches.

AQUATOX is an ecosystem model that estimates the environmental fate and effects of toxic chemicals, conventional pollutants, and nutrients from point and non-point sources on a stream-specific basis. In particular, AQUATOX allows assessors to model the fate of TSS, ammonia, nitrate, phosphate, carbon dioxide, DO, pH, temperature, light, and dissolved organic toxicants on the receiving waterbody. AQUATOX also provides an assessment of the impacts of these pollutants on assorted organisms (*e.g.,* phytoplankton, certain guilds and taxonomic groups of invertebrates and fish) and detrital components. AQUATOX can be used to investigate pollutant effects on streams, small rivers, ponds, and lakes. AQUATOX is relatively applicable to site-specific studies, models many conventional pollutants and nutrients, and estimates the impacts on a wide range of key aquatic ecosystem variables. Possible constraints of using AQUATOX to model the impacts and benefits from regulating the MPP industry are that (a) fairly detailed pollutant- and reach-specific parameters must be compiled to run the model, (b) it does not estimate BOD and FC (pollutants necessary for the water quality index (WQI) calculations) concentrations in the receiving waterbody, (c) AQUATOX is intended to represent a single stream or river reach or an entire pond, lake, reservoir, or estuary. A segmented version of AQUATOX, or multiple model runs, would be required to evaluate spatially variable conditions downstream of the immediate waterbody of interest if this were determined to be necessary.

QUAL2E simulates the in-stream behavior of toxic chemicals, conventional pollutants, and nutrients on a branching, one-dimensional stream-specific basis. In particular, QUAL2E models the concentrations of DO, BOD, temperature, algae, organic nitrogen, ammonia, nitrite, nitrate, organic phosphorus, dissolved phosphorus, FC, up to three conservative pollutants (pollutants that remain chemically unchanged in the water), and one non-conservative pollutant from point and non-point sources. QUAL2E allows a user to model up to 25 reaches on a river and 25 pollution sources along the river. Like AQUATOX, QUAL2E is relatively applicable to a site-specific analysis, and it also models many conventional pollutants and nutrients. Possible constraints of using QUAL2E to model the MPP industry are that (a) detailed pollutant- and reach-specific parameters must be compiled to run the model, (b) it does not estimate the TSS (a pollutant necessary for the WQI calculations) concentration in the receiving waterbody, and (c) it is only applicable for rivers, not lakes or estuaries.

BASINS is a multipurpose environmental analysis system that allows users to perform watershed- and water-quality based studies. This tool allows users to investigate river segments and how they may be impaired by point source and non-point source discharges. Databases available for use with BASINS provide necessary environmental background data, environmental monitoring data, and point source loading data. BASINS integrates the use of models such as QUAL2E, the Hydrological Simulation Program Fortran (HSPF) and Soil and Water Assessment Tool (SWAT) to conduct fate and transport assessments of point and non-point sources. BASINS models conventional pollutants and nutrients, including all the pollutants necessary to calculate a WQI, and (a) all the pollutant- and reach-specific parameters are available in the system's database files, (b) reach background concentrations for DO, ammonia, and BOD are available in the system's

[1] U.S. EPA (U.S. Environmental Protection Agency). Estimation of National Economic Benefits Using the National Water Pollution Control Assessment Model to Evaluate Regulatory Options for Concentrated Animal Feeding. December, 2002.

database files, and (c) it is applicable to rivers, estuaries, and lakes.

If site-specific models are used, EPA will not be able to model each regulated MPP facility receiving water or watershed separately due to various factors, including data requirements and time constraints. One potential scenario is to develop a limited number of ''generic'' watersheds that are representative of the topography and hydrology of the areas in which MPP facilities are located. Load reduction scenarios for each of the facilities with detailed information would then be evaluated for water quality improvements using the ''generic'' watershed which best represents the geography and flow conditions of the discharging facility. Another option being considered is to model a small sample of the watershed or reach areas containing MPP facilities and extrapolate results to a broader number of areas (see Section VII.B.2 of this NODA).

In determining which of these candidate models to pursue, EPA will weigh resource requirements for each model, the availability of data required to run each model, and the contribution of the endpoints simulated by each model toward best representing the range of environmental impacts and benefits of regulation. If EPA uses one or more of these models for the final rule, EPA will use the revised final loadings estimates along with information on facility location within watersheds. A comparison of the advantages and disadvantages of all three models is provided in Table VII.A.2–1. EPA solicits comment on the applicability of the AQUATOX, QUAL2E and BASINS models to model the environmental benefits of the MPP regulation.

TABLE VII.A.2–1.—SUMMARY OF THE FEATURES OF AQUATOX, QUAL2E, AND BASINS

AQUATOX	QUAL2E	BASINS
Conventional and nutrient loadings assessed	Conventional and nutrient loadings assessed	Conventional (including DO, BOD, TSS, FC) and nutrient loadings assessed
Eciststen effects (effects on fish and other aquatic life) estimated	Requires specific data about reach and pollutant parameters	Includes background levels for DO_3, NH_3, and BOD
Requires specific data about reach and pollutant parameters	Does not model TSS; Only models rivers, no estuaries or lakes	Reach and pollutant data easily available from BASINS databases
Does not model BOD, FC; Multiple model runs required to model effect of pollutants downstream from reach	Peer reviewed/available to public	Models rivers, estuaries, and lakes
Peer reviewed/available to public		Peer reviewed/available to public

B. Recreational Benefits: What Changes and Information Are Being Considered?

The benefits analysis for the proposed rule used two methods to estimate a household's willingness to pay for improvements in water quality: (1) A water quality ladder; and (2) a continuous water quality index. Both methods are based on results from a stated-preference survey conducted by Mitchell and Carson (1993).[2] Previous applications of the Mitchell and Carson survey had focused on the household willingness to pay for ''stepped'' improvements in water quality from current levels to boatable, fishable, and swimmable conditions nationwide. Each step on the ladder, *i.e.* use level, was defined by a set of water quality indicators such that a water body must meet minimal criteria for every indicator to be classified into the next higher use class. Thus, the stepped willingness to pay could only indicate a benefit from an action that resulted in all water quality indicators satisfying the next higher use category. The ladder approach failed to attribute any benefits to improvements in water quality that were insufficient to actually achieve a discrete improvement in use. Conversely, a relatively small change in water-quality could receive a relatively large valuation if it happened to push water-quality over the threshold between steps. A ''continuous'' method was suggested by Mitchell and Carson (1993) as a means to attribute benefits to marginal water quality improvement whether or not it happened to be of sufficient improvement to result in reclassification to a higher use class. The benefits analysis of the proposed MPP regulation presented both methods in order to contrast their results.

The ''continuous'' method of monetizing water quality benefits from WQI changes used in the analysis of the proposed rule was further revised in the benefit assessment of the final effluent limitation guidelines for CAFO. This revision included the application of a benefit transfer function from the Mitchell and Carson survey. Mitchell and Carson expressed the results of their survey in several forms. In one format, Mitchell and Carson assigned a single value to each change in use class, *e.g.*, households were willing to pay $184 (1999 dollars; updated household income) to raise all of the nation's waters from boatable to fishable conditions. The continuous benefit analysis of the MPP proposed rule divided this value by the number of WQI points in the step so that each unit change was assigned a portion of the value for achieving the whole step. For example, assume the threshold WQI for boatable waters was 79 and the threshold for the next higher step, fishable waters, was 94.4. Dividing $184 by 15.4 WQI points in the boatable range allocates $11.91 to each WQI point gained. Thus, household willingness to pay for a three point improvement in WQI in this range would be $35.73 (=3×11.91). Mitchell and Carson also expressed their results as an equation relating the change in the water quality index and household income to the household's willingness to pay for improved water quality. For the final rule, EPA is considering using this function to value benefits based on the changes in the WQI. The continuous equation approach may be superior to the ladder approach in that it addresses concerns that benefits from marginal changes in the water quality are missed using the discrete ladder. And the Mitchell-Carson benefit function approach may be superior to the WQI approach used at proposal in that it is less sensitive to the baseline use of the waterbody. In contrast, the WQI

[2] Carson, Richard T. and Robert C. Mitchell. 1993. The Value of Clean Water: The Public's Willingness to Pay for Boatable, Fishable, and Swimmable Quality Water. Water Resources Research 29(7):2445–2454.

approach used at proposal applies values to water quality index changes that are more consistent with expected levels of use as predicted by NWPCAM results and the threshold criteria in the ladder. The valuation function from the Mitchell and Carson work also demonstrates consistency with economic theory in that it exhibits a declining marginal willingness to pay for water quality. However, the ladder approach captures the discrete changes in uses presented to respondents in the survey instrument used to collect the underlying valuation data. While EPA recognizes that caution must be used in manipulating valuations derived from stated preference surveys, EPA believes the WQI–6 and the Mitchell-Carson valuation function may help address some concerns associated with the NWPCAM monetization of benefits at proposal. Both of these enhancements were incorporated in NWPCAM version 1.6 used to analyze benefits for the final CAFO rulemaking (DCN 350510).

Since willingness-to-pay (WTP) for water quality improvements was assessed by Mitchell-Carson only at a national level (*i.e.*, ''How much would you pay to bring all freshwaters in the U.S. from boatable up to swimmable?''), NWPCAM needs a methodology for assigning a share of this WTP to individual water bodies that may benefit from the rule. Generally, EPA assigns this share proportioned based on the ratio of affected stream miles to total stream miles. In doing this EPA allocates two thirds of willingness to pay to water quality improvements that occur in state. It is reasonable to assume that individuals will have greater marginal values for water quality improvements that occur in state, and Carson and Mitchell results appear to support this assumption. The consequences of alternative assumptions, such as equal marginal willingness to pay for in state and out of state water quality improvements, on final benefit estimates is a function of relative populations and ratios of population to total stream miles for states with and without stream reaches affected by this rule. For the final rule, EPA is considering conducting a sensitivity analysis to determine the impacts of these assumptions on the monetized benefits estimates.

EPA solicits comment on the use of Mitchell and Carson's valuation function for estimating the monetized benefit for the MPP industry. If more site-specific valuation information becomes available, EPA may decide to incorporate those site-specific values for estimating the monetized benefit.

C. Toxicity Assessment: What Changes and Information Are Being Considered?

Commenters also raised concerns over pollutants of concern (POCs) that were not addressed in the proposal. Based on these comments, EPA has performed exploratory analysis employing stream dilution modeling techniques, which do not take into account fate processes other than complete immediate mixing, to assess the potential impacts of releases of ten pollutants (ammonia, barium, chromium, copper, manganese, molybdenum, nickel, titanium, vanadium, and zinc) from the 53detailed survey MPP facilities for which sufficient data were available to model. These 53 facilities directly discharge wastewaters to 53 receiving streams. These simplified stream dilution techniques have been used in other promulgated effluent guidelines such as Iron and Steel, Metal Products and Machinery, and Transportation Equipment Cleaning.

Using this approach, EPA assessed the potential impacts in terms of effects on aquatic life and human health. The impacts to aquatic life are projected by comparing the modeled instream pollutant concentrations under current (baseline) treatment levels, to published EPA aquatic life criteria guidance [3] or, for pollutants for which no water quality criteria have been developed, to toxic effect levels (*i.e.*, lowest reported or estimated concentration that is toxic to aquatic life).

Impacts to human health are projected by (1) comparing estimated instream pollutant concentrations to health-based toxic effect values or criteria, and (2) estimating the potential reductions of noncarcinogenic (systemic adverse effects such as reproductive toxicity) hazard from consuming contaminated fish and drinking water. Systemic hazards are evaluated for the general population (drinking water only), sport anglers and their families, and subsistence anglers and their families. Potential carcinogenic risks are not evaluated since none of the pollutants modeled are classified by EPA as known or probable carcinogens.

EPA projects that modeled instream pollutant concentrations of one pollutant (copper) will slightly exceed (1.03 ratio) chronic aquatic life criteria or toxic effects levels in only 1 of the 53 receiving streams at current discharge levels. No exceedences of acute aquatic life criteria or toxic effect levels are projected. In addition, EPA projects that one pollutant (manganese) will marginally exceed (1.2 ratio) human health criteria or toxic effect levels in 1 of the receiving streams. No systemic toxicant effects are projected for anglers consuming fish caught from any of the receiving streams at current discharge levels. Based on these results, EPA projects that there are no meaningful health or aquatic life benefits to be obtained as a result of the selected BPT or BAT options and no further analyses of these types of impacts are being considered.

D. Other Benefits Categories Being Considered

1. Drinking Water Treatment

Suspended solids can interfere with effective drinking water treatment. Specifically, high sediment concentrations that interfere with coagulation, filtration, and disinfection increase treatment costs. With more than 11,000 public drinking water systems throughout the United States relying on surface waters as a primary source, these costs can be substantial, though at most only a small fraction of these systems could be impacted by MPP facilities.

For the final rule, EPA is considering estimating the monetary value associated with the estimated reductions in TSS stream concentrations in terms of reduced drinking water treatment costs. This is done by relating the changes in TSS concentrations predicted by NWPCAM with the operational and maintenance (O&M) costs associated with the conventional treatment technique of gravity filtration at the drinking water treatment facility. These estimated cost reductions may be subject to a number of uncertainties, such as the use of average input values and default treatment design values, resulting in a rough approximation of estimated benefits.

The analytic approach being considered includes: (1) Identifying public drinking water systems and their water supplies that are potentially impacted by the discharge from MPP facilities; (2) linking the water supplies to the TSS concentrations predicted by NWPCAM at baseline and the various

[3] In performing this analysis, EPA uses guidance documents published by EPA that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. The simplified stream dilution techniques are used as a screening analysis for priority pollutants and hence EPA uses the national criteria values in lieu of more site specific values. It is not intended as a comprehensive analysis, but rather as a trigger for potential impacts in terms of effects on aquatic life and human health. A more site-specific analysis could be undertaken if the simplified stream dilution technique projected in-stream exceedences of national aquatic life and human health criteria.

regulatory options; and (3) estimating the reductions in drinking water treatment costs.

a. Identification of Public Drinking Water Systems

Information regarding public water systems is contained in the Safe Drinking Water Information System (SDWIS)[4] Database. There are 11,403 Community Water Systems (CWSs supply water to the same population year-round) that rely on surface water to serve 178.1 million people. The water supplies of a small number of these CWSs may be impacted by the discharge from MPP facilities. The first step in the approach that EPA is considering is identifying the subset relevant to the MPP rule of CWSs and their associated streams, the populations served, and operating status. This will be performed using two EPA databases: (1) Water Supply Database (WSDB)[5] and (2) SDWIS. Hydrologic locational information will be obtained from WSDB, and populations served by the drinking water systems, as well as operating status, will be obtained from SDWIS.

b. Application of TSS Concentrations and Water System Data

To estimate reduced drinking water treatment costs associated with TSS reductions, EPA will link the site-specific water system data from WSDB and SDWIS with NWPCAM predicted TSS concentration reductions at baseline and the various regulatory options (*see* Section VII.A. for discussion of water quality modeling). The median concentrations of TSS predicted by NWPCAM will be applied to each of the public water utilities located within the watershed. EPA may consider using site-specific TSS concentrations (*i.e.*, the concentration at the drinking water intake) for the final rule. EPA is currently working to determine if the appropriate data are available. EPA solicits comment on the use of site-specific TSS concentrations for estimating reduced drinking water treatment costs.

c. Estimation of Drinking Water Treatment Costs

EPA is considering employing the Water Treatment Estimation Routine (WaTER),[6] developed in a cooperative effort between the U.S. Department of the Interior, Bureau of Reclamation, and the National Institute of Standards and Technology, to estimate reduced drinking water treatment costs based on projected reductions in TSS stream concentrations. Using minimal information such as production capacity and raw water composition, WaTER calculates dose rates and cost estimates (construction and annual O&M) for 15 standard water treatment processes, based on default design values. These default design values can be modified, based on the users specific requirements. WaTER employs cost indices and the Producer Price Index and derives cost data from Estimating Water Treatment Costs (EPA–600/2–79–162a–d, 1979).[7] Cost estimates are derived independently for each selected process.

EPA is considering using WaTER to estimate reduced O&M costs for the standard water treatment process of gravity filtration, based on the capacities of drinking water treatment utilities and the estimated TSS stream concentration reductions. There are two components to gravity filtration: the backwashing system and the gravity filter structure. O&M costs are based on the area of the filter bed (applicable range 13–2600m^2) as determined by the system flow rate (production capacity) and TSS concentration. Major O&M costs include materials, energy, and labor. Off-site disposal costs and pretreatment costs, as well as construction costs, will not be included in EPA's estimates. Cost saving estimates will be derived based on the change in O&M costs predicted at baseline and the regulatory options.

EPA solicits comment on this approach to estimating monetized benefits associated with reduced TSS concentrations predicted by NWPCAM at drinking water intakes.

2. Fish Kills

Episodic fish kills resulting from nutrients, animal waste spills and other discharges from MPP facilities have been documented in the Mid-West, and South as well as along the East Coast. Causes for the fish kills included increase in the pH, toxic amounts of ammonia and chlorine, nutrients and fecal coliforms (*see* Section 20.4.2, DCN 145010). In the case of excessive nitrogen and phosphorous discharges, these pollutants can trigger increases in algae growth that reduce the concentration of dissolved oxygen in water and can eventually cause fish to die.

In addition to killing and harming fish directly, pollution from MPP facilities can affect other aquatic organisms that in turn harm fish. In particular, the Eastern Shore of the United States has been plagued with problems related to *Pfiesteria,* a dinoflagellate algae that, under certain circumstances, can transform into a toxic form that stuns fish, making them lethargic. Other toxins are believed to break down their fish skin tissue and leave lesions or large gaping holes that often result in death. One reason for the transformation of *Pfiesteria* to its toxic form is believed to be high levels of nutrients in water (Morrison, 1997).[8] EPA is gathering evidence on documented fish kills resulting from discharges from MPP facilities. EPA may either use this estimate of fish kills in its non-quantified benefits assessment, or use it to derive a lower bound quantified estimate of fish kills attributed to MPP facilities as part of the benefits analysis for the final rule. EPA requests information on documented fish kills resulting from MPP discharges and comment on the use of this information in its benefits assessment.

3. Regional Vulnerability Assessment

The Office of Research and Development within EPA is developing the Regional Vulnerability Assessment (ReVA) program to evaluate environmental conditions and known pollutants/stressors within a geographic region. Detailed information about ReVA can be found at *http://www.epa.gov/reva/about.htm.* ReVA's purpose is to identify those ecosystems most vulnerable to being lost or permanently harmed in the next 5 to 25 years and to determine which pollutants/stressors are likely to cause the greatest risk. The goal of ReVA is not exact predictions, but identification of the types of undesirable environmental changes most likely to occur over the coming years. The ReVA program will improve environmental assessments for a region by using integrative technologies to predict future environmental risk and support informed, proactive decision-making and prioritization of issues for risk management. Detailed information on

[4] U.S. EPA (U.S. Environmental Protection Agency). 2000a. Safe Drinking Water Information System (SDWIS). Office of Groundwater and Drinking Water. Accessed September 2002. *www.epa.gov/safewater/pws/factoids.html.*

[5] U.S. EPA (U.S. Environmental Protection Agency). 2000b. Water Supply Database. Office of Water. Downloaded February 2000.

[6] U.S. Bureau of Reclamation. 1999. Water Treatment Estimation Routine (WaTER). Denver, Colorado. U.S. Department of the Interior. August 1999. Accessed September 2002. *http://www.usbr.gov/water/desal.html.*

[7] U.S. EPA (U.S. Environmental Protection Agency). 1979. Estimating Water Treatment Costs. EPA–600/2–79–162a–d. August 1979.

[8] Morrison, C. 1997. ''The Cell from Hell and Poultry Farmers: Do They Have Anything in Common?'' The Shore Journal. August 31.

this program can be found at *http://www.epa.gov/reva.*

ReVA is a tool for integrating research on human and environmental health, ecorestoration, landscape analysis, regional exposure and process modeling, problem formulation, and ecological risk guidelines. ReVA develops landscape models that predict probability of impairment for individual watersheds given land use and biophysical characteristics. ReVA is able to explore hierarchical modeling (broad scale, landscape models combined with fine-scale watershed models) and grouping of watersheds to assess benefits associated with proposed alternative effluent standards against a backdrop of existing non-point source pollution and naturally occurring conditions that influence watershed vulnerability. EPA may consider using the output from the ReVA program as an additional source of information characterizing the environmental impacts and potential benefits of MPP facilities. EPA solicits comment on the use of a regional vulnerability assessment for the MPP environmental assessment.

VIII. Possible Changes to the Proposed Limitations and Standards

This section describes EPA's plans for revising the proposed limitations and standards before the final rule. The NODA record contains episode-level summary statistics, including the episode long-term averages and episode variability factors. (In this context, ''episode'' refers to either an EPA sampling episode data set or an industry-submitted self-monitoring data set.) After EPA completes its statistical and engineering review of the episode summary statistics and other available information, it will select episode data sets that reflect the appropriate performance capabilities of the model technologies for each option. EPA then will use these episode data sets to calculate the option long-term average as the median of the selected episode long-term averages, and the option variability factor as the mean of the selected episode variability factors. The final limitation/standard will be calculated as the product of the option long-term average and option variability factor, as explained in Sections 13.8 and 13.9 of the proposal technical development document.

Because EPA has not performed its review of the episode data sets, the NODA record does not include option long-term averages, option variability factors, and limitations/standards. Instead, the following discussion provides an overview of EPA's plans for reviewing the episode data sets and revising the proposed limitations and standards. The first subsection, VIII.A, discusses the revisions to the statistical methodology used to develop the limitations/standards and loadings. The second subsection, VIII.B, describes EPA's consideration of comments on the assumed monitoring frequency used to develop the proposed limitations and standards (and for deriving costs for complying with the proposed rule). The third subsection, VIII.C, describes EPA's plans for reviewing the data that will be used to develop the final limitations and standards. The fourth subsection, VIII.D, describes EPA's planned review of the variability factors that EPA expects to use to derive the final limitations and standards. The fifth subsection, VIII.E, describes EPA's plans for assessing the achievability of the limitations and standards it is considering promulgating. The final subsection, VIII.F, describes EPA's preliminary identification of errors in 40 CFR part 432 and the recodification included in the proposed rule.

A. Revision of Statistical Methodology for Long-Term Averages and Loadings

In the proposal, EPA used the data from 11 MPP sampling episodes to develop the proposed long-term average effluent concentrations, variability factors, limitations/standards, and loadings. Since then, EPA has completed three additional MPP sampling episodes which operate some of the technologies considered as a basis of the limitations and standards. Two of the additional sampling episodes were at facilities that had been sampled prior to proposal. EPA also has received self-monitoring data from 16 of the 24 MPP facilities from which EPA requested data, as discussed in Section II.B above. The following two sections briefly discuss EPA's methodology at proposal and the revised methodology EPA is considering for calculating limitations/standards and the loadings associated with the various technology options.

1. Estimation of Daily Values and Long-Term Averages in the Proposal

For the proposal, to the extent possible with available data, EPA calculated the limitations/standards and technology option loadings using the measured daily effluent concentrations at the sampled facilities that were chosen as the basis for each technology option. However, when effluent data were unavailable from a particular model technology, EPA estimated the daily effluent concentrations by combining influent data with removal fractions from facilities with components of the model technology. When influent data were not available, EPA estimated the daily effluent concentrations using a facility pollutant mass balance between the final effluents from wastewaters from different processes (*e.g.,* first processing, rendering), as explained in Section 9.2.2 of the proposal development document. As explained in Section 13 of the proposal development document, EPA also adjusted several estimated concentration values upward to be more consistent with documented performance values for the technology or actual effluent concentrations.

To derive the proposed limitations and standards, EPA then modeled the combined measured and estimated effluent data using the modified delta-lognormal distribution to estimate the long-term averages and variability factors. After reviewing the estimated long-term averages used in calculating limitations, EPA determined that substitutions were necessary and appropriate. Sections 9 and 13 of the proposal development document describe the substitutions.

2. Revised Approach

EPA has revised its data selection to incorporate the new data from sampling episodes and DMRs (*i.e.,* individual weekly/daily data points, not summary data). As a consequence of the new data and the comments that it received, EPA intends to use only measured effluent values rather than estimated values in developing the final limitations/standards and loadings. DCNs 165011 and 165140 provides listing of the data that EPA is considering using to calculate the final limitations and standards. For today's NODA, because of time constraints, EPA has used the arithmetic average of the data in calculating the target effluent concentrations used for developing costs and loadings. For the final rule, EPA intends to use the modified delta-lognormal distribution to model the data, and thus, the long term average values will be similar but somewhat different than the target effluent concentrations presented today. Also, EPA plans to use the daily/weekly data, rather than the summary DMR data used today. This delta-lognormal distribution was used for the proposal and is described in Appendix G of the proposal development document. *See* Section VIII.D for EPA's plan for reviewing variability factors to be used for the final rule.

For the two facilities that EPA sampled twice (*i.e.,* once prior to proposal and once after proposal), EPA's initial assessment is that the post-

proposal sampling episode at each facility provides a better demonstration of the model technology, and has included only the post-proposal episode in the NODA analyses. For the proposal, EPA had excluded one of the pre-proposal episodes (6446) and included the other pre-proposal episode (6335) in its analyses. For episode 6446, EPA continues to exclude these data due to concerns that the facility had with the results of its self-sampling (*see* DCN 15169) in comparison to EPA's sampling episode results. For episode 6335, EPA had now excluded these data due to a combination of inconsistent laboratory results for nitrogen and operational issues at the facility during the sampling episode (*see* DCN 00211). For several POCs both of these pre-proposal episodes showed higher effluent concentrations than the post-proposal episodes at the same facility. However, for Total Nitrogen, which EPA is considering regulating in the final rule, these pre-proposal episodes showed lower effluent concentrations than the post-proposal episodes at the same facility. EPA solicits comment on the use of data from Episodes 6446 and 6335 for use in developing pollutant loading estimates and limitations and standards for the final rule.

B. Consideration of Assumed Monitoring Frequency

In developing the proposed maximum monthly limitations and standards, EPA had assumed a monitoring frequency of thirty samples per month (*i.e.,* daily monitoring). In the preamble (67 FR 8632), EPA solicited comment on whether small poultry facilities should have monthly limitations/standards based upon 20 days, rather than 30 days, because they would be unlikely to operate on weekends. In response, EPA received comments that stated that monitoring every day during the month was too frequent for all facilities. In response, EPA is considering reducing the assumed monitoring frequency to weekly for any new limitations and standards promulgated in this rulemaking. EPA incorporated this assumed monitoring frequency into the monitoring costs for this notice. EPA solicits comment on such a change in monitoring frequency.

The comments indicate some confusion may exist about the assumed monitoring frequency used to develop the existing limitations and standards. In the 1975 rule, the monthly limitations and standards specified that the ''Average of daily values for thirty consecutive days shall not exceed'' the stated value. Thus, EPA assumes that facilities perform daily monitoring to comply with the existing regulations. As stated by commenters, the monitoring frequency has an effect on the probability of exceedences. Thus, a facility should monitor at the same frequency that EPA has assumed in developing the limitations and standards. Monitoring less frequently results, theoretically, in average values that are more variable. As a consequence, for example, a facility that collects four monitoring samples per month would be likely to exceed, at a relatively high rate, the monthly average limitations based upon an assumed monitoring frequency of 30 monitoring samples per month. Thus, if facilities monitor less frequently, then operators may find they need to design treatment systems to achieve an average below the long term average basis of the limitations/standards and/or exert more control over variability of the discharges in order to maintain compliance with the limitations/standards.

C. Data Review for Final Limitations and Standards

While EPA has preliminarily reviewed the analytical data for the NODA, EPA will conduct a more detailed engineering and statistical review of the data before the final rule, similar to that performed for other rules. The following paragraphs identify specific data reviews that EPA typically performs before promulgating a final rule.

For all pollutants that might be regulated in the final rule, EPA plans an engineering review of its data to verify that the limitations and standards are reasonable based upon the design and expected operation of the control technologies and the facility process conditions. As part of that review, EPA plans to examine the range of performance represented by the episode data sets with the model technology. EPA expects that some episode data sets will demonstrate application of the best available technology and report an effluent quality that would meeting the limitations EPA is considering. Other episode data sets may demonstrate performance from the same types of technology, but not reflect the best design and/or operating conditions for that technology. For these facilities, EPA will evaluate the degree to which the facility can upgrade its design, operating, and maintenance conditions to meet the limitations or standards EPA is considering. If such upgrades are not possible, then the limitations and standards associated with the candidate technology would be modified to reflect the lowest levels that the technology can reasonably be expected to reliably and consistently achieve. If some individual values are greater than the limitations and standards EPA is considering, EPA expects to consider whether the facility can eliminate those comparatively high values and achieve the limitations under consideration through optimization and improved operation of the treatment system. If so, EPA might conclude that the limitations adequately reflect the treatment capabilities of the model technologies. In such cases, EPA expects to adjust its cost estimates for the facility to cover any upgrades and improved O&M necessary to reliably and consistently meet the limitations. *See* Section 13.6 of the proposal development document for further explanation.

As part of its engineering and statistical review of the data, EPA intends to review the sampling episode and industry self-monitoring data for consistency and any unusual patterns (such as all values being the same over a period of time which can indicate nondetected values rather than measured values, lack of sensitivity in the laboratory procedures, or other causes). EPA also intends to evaluate discrepancies between concentrations for related pollutant parameters. For example, because CBOD theoretically should be less than BOD, EPA might investigate CBOD values that exceeded BOD values to determine whether any data exclusions are appropriate. In addition, EPA plans to reevaluate the engineering and statistical reasons for excluding any data that otherwise meet the data review criteria used to assess laboratory reports. These data review criteria are used consistently for each guideline and are located at DCN 165330 in Section 22.6 in the record. EPA also will verify that it has fully documented its reasons for excluding any data that otherwise meet the data review criteria for the laboratory reports, for example the data from Episodes 6446 and 6335, as discussed in Section VIII.A.

EPA intends to review field duplicates and multiple grab measurements and investigate extreme discrepancies between values for samples collected on the same day. The measurements for the field duplicates and grab samples are listed in DCNs 165020 and 165030. EPA also intends to review summary statistics for each episode (*see* DCNs 165070 and 165150). EPA may further review episodes with patterns such as minimum and maximum values far apart. If some episodes appear to have data in ranges different from most other episodes in the same subcategory, EPA may perform additional engineering evaluation of the

process conditions and treatment performance. For example, if one facility has substantially more concentrated effluent than the others, a detailed engineering review might reveal conditions that would justify excluding the less concentrated effluent data from other facilities from the calculations of limits.

For the larger self-monitoring data sets, EPA intends to review graphical displays of the daily measurements to evaluate patterns in the data, such as steadily increasing or decreasing values over time or during certain time intervals. The plots may also indicate data values that should be reviewed further and possibly excluded if they appear to reflect conditions other than normal operations. For example, EPA might exclude a value which was substantially lower than the other measurements if an extremely high flow value was recorded for that day.

Where both influent and effluent are available for an episode, EPA intends to investigate the impact on the performance of the technology due to the influent levels. In this investigation, EPA might evaluate whether the influent concentrations are at treatable levels and whether the treatment system had efficient removal capability. For the proposal, this treatable level was defined as five times the nominal quantitation limit that generally was associated with the analytical method most frequently used to measure samples collected during EPA's sampling episodes. (The nominal quantitation limit is the smallest quantity of an analyte that can be reliably measured with a particular method. The record items for the proposal generally refer to the ''nominal quantitation limit'' as the ''baseline value.'') If the influent data were below the treatable level or just slightly above, EPA may exclude the effluent data from the analyses for the final limitations and standards. EPA's purpose in excluding these effluent data sets would be to ensure that the effluent concentrations resulted from treatment and not simply from the absence or extremely low levels of that pollutant passing through a treatment system.

For most facilities in the MPP concentration database, EPA has data from either a sampling episode or the facility's self-monitoring (DMR) data. However, for a few facilities, EPA has data from both a sampling episode and self-monitoring data. The statistical analyses for the NODA treat each sample episode and self-monitoring data set separately. For example, if EPA had sampling episode and self-monitoring data sets for a facility, it would have calculated two long-term averages from the facility's data, one from the sampling episode data set and the other from the self-monitoring data set. This practice is consistent with other guidelines and is used because the data tend to be associated with different time periods and/or analytical methods. For any facilities with EPA sampling data and self-monitoring data for the same time period, EPA intends to evaluate whether the data should be combined into a single data set or continue to be analyzed as two separate data sets for the final rule. For facilities that submitted self-monitoring data over an extended period, if there are substantial differences between certain time intervals, EPA intends to reevaluate whether each time interval should be treated separately in the data analyses.

In its review of the self-monitoring data, EPA will verify that the concentrations were determined by an analytical method approved for compliance monitoring in 40 CFR part 136. If the facility has identified a different method, EPA may decide to contact the facility for more information about the laboratory analysis to determine if the results would be comparable to those generated by approved methods. It is likely that EPA would need to perform a full review of the laboratory reports such as initial precision and recovery (IPR) analyses, instrument tunes, calibrations, blanks, laboratory control sample (LCS) analyses, matrix spikes, surrogates, and all sample data. Without the necessary information, EPA may choose to exclude measurements from non-approved analytical methods.

D. Evaluation of Final Variability Factors

As explained in the introduction to Section VIII, the NODA record does not include the option-level variability factors used to calculate limitations/standards. For the final rule, EPA intends to use the same data and methodology described in Section VIII.A. The section below describes EPA's plans for reviewing and possibly transferring option-level variability factors for the final limitations and standards.

To identify situations producing unexpected results, EPA reviews all of the episode variability factors and compares daily to monthly variability factors. One criterion is that the daily and monthly variability factors should be greater than 1.0. A variability factor less than 1.0 would result in a unexpected situation where the estimated 99th percentile would be less than the long-term average. A second criterion is that the daily variability factor should be greater than the monthly variability factor so that the daily limitation will be numerically greater than the monthly average limitation. A third criterion is that not all of the measured (non-censored) results can be below the sample-specific detection limits. While such data sets can be modeled using statistical techniques, the results can be difficult to interpret because the model is generally used for data sets where non-censored values are expected to be larger than non-detected values. A fourth criterion relates to the reasonableness of calculated variability factors. For example, EPA may further evaluate data sets for daily variability factors less than 1.1 and above 7 to determine if any anomalies existed in the data. As a result of this review, EPA may determine that a variability factor does not represent a reasonableness range of variation from well-operated systems, but rather may indicate a situation where better process control is needed. Any reduction in variability factors based on tighter operational control would also be reflected in higher cost estimates to achieve this control if necessary.

For some subcategories, EPA may be unable to calculate variability factors. This could occur for a pollutant in an option where the episode data sets had too few noncensored measurements (*e.g.,* the pollutant was not detected at measurable levels) or no data were available. For example, if a pollutant had all nondetected values for all of the episodes in an option, then it would not be possible to calculate the variability factors for that option. In such cases, EPA will transfer the variability factors from other options, subcategories and/or similar pollutants as appropriate.

E. Evaluation of Achievability of Final Limitations and Standards

If a facility operates the model technology for an option to achieve the relevant long-term average, EPA expects that the facility will be able to reliably and consistently comply with the limitations EPA may promulgate. Because EPA's option variability factors account for reasonable excursions above the option long-term average, the limitations promulgated by EPA are intended to correspond to levels (above the actual long-term averages) that well-operated systems can reliably and consistently achieve. In order to meet the monthly average limitation, a facility would need to counterbalance a value near the daily maximum limitation with one or more values well below the daily maximum limitation.

EPA recognizes the importance of promulgating achievable limitations; thus, as described in this section, EPA intends to perform a series of steps to compare the available data and information to the limitations and standards. The following paragraphs describe those steps.

First, EPA intends to perform statistical reviews of the data and its statistical model. In this step, EPA intends to compare the limitations and standards to the data used to calculate the limitations and standards. EPA performs this comparison to determine whether it used appropriate distributional assumptions for the data used to develop the limitations and standards (*i.e.,* whether the curves EPA used provide a reasonable ''fit'' to the actual effluent data). This comparison should not be interpreted to mean that EPA expects values that exceed the limitations to occur at some fixed rate. Furthermore, because EPA has used data from facilities that were not required to comply with the final limitations at the time the data were collected, the observed data cannot be interpreted as supporting estimates of compliance rates. Rather, in conjunction with the engineering review (step 2 below), the results from this step allow EPA to determine if it has used reasonable statistical assumptions in developing the limitations. This is also explained in Section 13.6 of the proposal development document.

Second, EPA intends to perform a detailed engineering evaluation of the data and facilities used as a basis for the final limitations and standards. For facilities with higher or consistently lower discharges than the option long-term averages used to calculate the limitations/standards, EPA will verify that the facilities have the relevant treatment technology and are operating it appropriately. For example, upon contacting a facility with considerably less concentrated discharges, EPA may discover that the facility has a component in its treatment train that is not part of the model technology. In such a situation, EPA would be likely to exclude the facility's data from its final calculation of the limitations and standards, because the facility's treatment capabilities are better than the model technology. For facilities with more concentrated discharges that are operating the model technology, EPA may determine that such values can be eliminated through improved operation of the treatment system. In such cases, EPA may adjust its cost estimates for the facility for any upgrades and improved operations and maintenance (O&M) necessary to reliably and consistently meet the final limitations/standards. As part of the engineering evaluation, EPA also will investigate excessive variations that could indicate exceptional incidents or upsets that are not typical of good performance. Based on thorough technical review of the data, EPA may exclude data that do not represent proper process operations or treatment control and would adjust its cost estimates appropriately. For the final rule, the record will clearly state which, if any, data points were excluded and the rationale for the exclusion.

Third, in some cases, EPA calculated the arithmetic average of the concentration values from two or more samples to obtain a single daily value that could be used in other calculations. EPA's approach of averaging multiple analytical results to obtain a single daily value is consistent with standard, conventional practice in environmental analytical work. This approach also gives one day's sampling information appropriate weight in determining effluent limitations and is consistent with requirements of NPDES regulations at 40 CFR part 122 which define the daily discharge. Multiple daily values resulted from measurements of field duplicates and grab samples during EPA sampling episodes. As explained in Section 13 of the proposal technical development document, field duplicates are two samples collected for the same sampling point at the same time, and thus, characterize the same conditions at that time at a single sampling point. Also as explained in Section 13, EPA collected multiple (usually four) grab samples for HEM during a sampling day at a sample point, because Method 1664 requires that grab samples rather than composite samples be used in the laboratory analysis. For the final rule, EPA will continue to model daily values in calculating the limitations and standards. EPA also intends to: (1) review the individual measurements from field duplicate pairs and individual grab samples; and (2) compare the individual measurements to the final limitations and standards. If EPA finds extreme discrepancies, EPA may reevaluate its data aggregation procedure (*i.e.,* arithmetic averaging) or data selection used to develop the final limitations and standards.

Fourth, EPA intends to compare the limitations and standards to other EPA sampling data that were not used as a basis of the limitations and standards. For example, EPA would expect that a more sophisticated treatment system would result in effluent concentrations that have lower concentration values than the limitations based upon the less sophisticated, model technology. If EPA notes a different trend, it may perform a more detailed engineering review of the treatment technologies and data selection.

Fifth, EPA intends to verify that 40 CFR part 136 contains approved analytical methods that will be appropriate for compliance monitoring with the final limitations and standards. If EPA determines that the limitations are based upon data from some laboratories that, under certain conditions, had measured to levels lower than the nominal quantitation limits specified in some methods, EPA will evaluate whether those results are quantitatively reliable. In some cases, EPA may discover, for example, that the laboratory had used an approved technique that can reliably measure lower levels, but might not be commonly used. If EPA concludes that the results are quantitatively reliable, it will continue to use the data to calculate loadings, long-term averages and variability factors. To ensure the final limitations and standards reflect ''typical'' laboratory reporting levels for approved methods, EPA may choose to establish the option long-term averages or limitations at values equal to or greater than the nominal quantitation limits specified in the analytical methods. Or, EPA may instead choose to provide guidance about the appropriate set of method options and a calibration range that will provide sufficient sensitivity to meet the effluent guideline limitations and standards.

Sixth, EPA intends to compare the limitations and standards to averages and daily values from discharge monitoring reports (DMRs). In the preamble to the proposal, EPA referred to this as a ''real-world'' check, although it is important to remember that many facilities for which DMR data are available may not have the technology installed on which the limits were based. For this reason, EPA intends to classify the facilities into three groups using the information in the detailed surveys and responses to the request for individual weekly/daily DMR data. The groups would contain the DMR data from facilities with: (1) The model or comparable technologies; (2) more sophisticated technologies; and (3) treatment that would require upgrades as a consequence of the rule. For the first group, EPA would expect the DMR data to have values generally less than the limitations and standards. For the second group, EPA would expect generally lower values than group 1. For the third group, EPA still intends to evaluate the data, although it expects that the data will generally have higher concentration values than the

limitations and standards. (EPA has included costs for these facility upgrades as part of the rule.) For any unexpected results, EPA may perform a more detailed engineering review of the processes and treatment technologies underlying the DMR data. Depending on the results of that review, EPA might evaluate whether any additional modifications to the model technology and/or limitations and standards were necessary.

F. Errors in Current 40 CFR Part 432 and the February 2002 Proposed Rule Text

In researching the derivation of existing limitations and standards, EPA has preliminarily identified what appear to be errors in the current 40 CFR part 432 and/or the February 25, 2002, proposed rule text. EPA intends to evaluate these discrepancies in further detail and correct the CFR as part of the MPP final rule. This section describes the discrepancies that EPA has identified.

40 CFR part 432 currently specifies monthly average limitations and standards for fecal coliforms and pH, while the text of the final rules published in the **Federal Register** (39 FR 7900; February 28, 1974 and 40 FR 906; January 3, 1975) includes only daily maximum limitations and standards for those parameters. For the subparts regulating the discharge of fecal coliforms, the daily maximum limitation/standard is ''Maximum at any time 400 mpn/100 ml.'' For the subparts regulating pH, the daily maximum limitation/standard is ''within the range of 6.0 to 9.0.'' For Subparts A through J, the current 40 CFR part 432 specifies monthly average limitations/standards as well as daily maximum limitations/standards for fecal coliforms and pH. The monthly values are the same as the daily maximum values. This appears to be incorrect. Because the values are the same for the daily maximum limitations/standards and the monthly average limitations/standards, EPA does not expect that any facility will need to change its operations if EPA eliminates the monthly average limitations/standards currently codified in the CFR for fecal coliforms and pH. Before promulgating the final rule, EPA intends to further investigate the derivation of the existing limitations/standards.

EPA also notes that the tables (in the existing CFR) of NSPS in sections 432.65 and 432.75, provide different values for the standards depending on whether the units are kg/kkg or lb/1000 lbs. For example, the TSS daily maximum standard is 0.044 kg/kkg or 0.036 lb/1000 lbs in section 432.65, when the two numerical values should be the same, regardless of the units. A review of the final rule (40 CFR parts 906–907; January 3, 1975) and the 1974 development document for the processor segment of the meat processor point source category indicates that NSPS was set equal to the BPT limitations for all pollutant parameters. Based upon this assessment, EPA preliminarily concludes that the NSPS in the kg/kkg units are correct because they have the same values as the BPT limitations. In sections 432.65 and 432.75 of the February 25, 2002, proposed rule, EPA selected the values associated with the units of lb/1000 lbs. Thus, after further investigation, if these values associated with units of lbs/1000 lbs are indeed incorrect, EPA will use the standards in units of kg/kkg in its final rule.

Two errors exist in the current 40 CFR 432.62 for the BPT limitations for Subpart F. The first error is in the monthly average limitation in units of kg/kkg for oil and grease which has a value of ''0.000'' which should be ''0.006.'' The second error is in the daily maximum limitation for TSS which has a value of ''10.044 lb/1000 lbs'' which should be ''0.044 lb/1000 lbs.'' EPA corrected these errors in the February 25, 2002, proposed rule.

EPA has identified three errors in the limitations and standards in the proposed rule. First, we inadvertently omitted the existing pH limitations and standards. As explained in the preamble to the proposal (67 FR 8629), EPA had intended to retain these pH limitations and standards. Second, we inadvertently assigned incorrect units of measurement in footnote (1) to the values listed in 432.63(b) and 432.73(b). The units listed in these parts were ''mg/l (ppm)'' and should have been ''pounds per 1000 pounds (or g/kg) of finished product.'' Finally, in sections 432.82(b) and 432.92(b), the proposed rule refers to 432.62(b) for COD limitations in error. The referral should be to section 432.72(b).

IX. Consideration of Options

EPA is presenting revised cost, pollutant reduction, and economic impact estimates in Section X of today's notice. These estimates are based on the following: additional data from surveys received after the initial cut-off date, data received with comments or through requests from EPA Regions and States, data revisions to reflect follow-up with survey recipients, and changes that result from certain methodological revisions. EPA will base its determinations for the final rule on these revised results and any further revisions that result from comment on today's notice. In the sections below, EPA discusses options it is considering for the different regulatory levels of control (*e.g.*, BPT, BAT, NSPS) for the subcategories of the MPP industry (See summary in Table IX–1).

A. Description of Modified Options

Commenters requested that EPA consider modifications to the preferred options selected as the basis for the proposed limitations and standards for certain subcategories. As a result of additional data and comments, EPA is reconsidering the technology options for BPT, BAT, and NSPS limitations (or standards) that EPA evaluated for the proposed rule. EPA is now considering two options for the final limitations that represent modifications of those considered in the proposal. In addition, EPA is considering not adopting further regulation for certain subcategories. EPA notes that all technology-based options it considered for the proposal and is evaluating for the final rule (for all subcategories) would include primary and secondary biological treatment and disinfection.

The first modified option EPA is considering is based on treatment systems employing partial denitrification of the MPP wastewater. This option does not achieve the same degree of denitrification as the proposed Option 3 (*i.e.*, complete denitrification). EPA defined ''complete'' denitrification based on achieving a low effluent Nitrate + Nitrite concentration. EPA has designated this modified option as Option 2.5. Discussions with industry representatives and evaluation of sampling and DMR data led to consideration of Option 2.5. Industry representatives commented that they often are able to achieve some degree of denitrification, but could not achieve the levels considered in the proposal without a significant increase in costs. EPA identified several facilities which are achieving partial denitrification by evaluating the long-term average Nitrate + Nitrite (or Total Nitrogen) effluent concentration and each facility's treatment in place. EPA is considering Option 2.5 as a basis for BPT, BAT and NSPS for the final rule based on data from these facilities.

The second modified option under review builds on the partial denitrification technology in Option 2.5 by adding chemical phosphorus removal to the treatment train. EPA has designated this option as Option 2.5 + P. Option 2.5 + P adds a treatment unit consisting of a chemical addition using alum which aids in precipitating and settling phosphorus. EPA notes that it evaluated phosphorus removal as an

additional treatment step at proposal under Option 4. EPA is still considering Option 4 as a basis for the final limitations and standards for certain subcategories. Option 4 includes nitrification, complete denitrification and chemical phosphorus removal. There are several facilities currently employing Option 4 (or more advanced technology) in the MPP industry. EPA is now giving less consideration to Option 3, because the only MPP facility (a poultry slaughtering facility) to identify Option 3 technology on their survey was not able to provide EPA with supporting data (*i.e.*, nitrate/nitrite, TKN, or total nitrogen effluent concentrations). Therefore, EPA did not have a facility to use as the basis for establishing long-term average concentrations for Option 3. The only facilities determined to have complete denitrification also used chemicals to remove phosphorus. EPA classified these facilities as Option 4. EPA notes that for the purposes of comparison it also looked at an option consisting of the nitrification treatment system of Option 2 followed by phosphorus removal (referred to as Option 2 + P). However, EPA is not considering Option 2 + P further for the final rule because of the considerable increase in cost as compared to either Option 2 or Option 2.5 (*i.e.*, an additional $31 million and $23 million, respectively) without the additional nitrogen removals associated with Option 2.5.

The options EPA is considering for non-small facilities in Subcategories A–D and K for the final rule are listed in Table IX–1, below. As discussed previously, EPA is not providing the revised estimates of costs, pollutant reductions, or economic impacts for small slaughtering facilities or meat and poultry further processing (Subcategories F–I and L) and independent rendering (Subcategory J) facilities in today's notice due to time constraints. However, those estimates are provided in, Section 21.1, DCNs 125803, 125606, 126002, and 126003 of the public record. EPA notes that it is considering the modified options discussed above, in addition to the proposed options, for those subcategories as well.

TABLE IX–1.—OPTIONS BEING CONSIDERED FOR NON-SMALL FACILITIES IN SUBCATEGORIES A–D AND K

Option	Description
2	Biological Treatment + Nitrification
2.5	Biological Treatment + Nitrification + Partial Denitrification
2.5 + P	Biological Treatment + Nitrification + Partial Denitrification + Chemical Phosphorus Removal
4	Biological Treatment + Nitrification + Complete Denitrification + Chemical Phosphorus Removal

B. Options Being Considered for Best Practicable Control Technology Currently Available (BPT)

As discussed in the proposal (67 FR 8582), in specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics employing the BPT technology. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

1. Subcategories A–D (Meat Slaughterhouses)

EPA established BPT for the Meat subcategories (A–I) in 1974 based on biological treatment (*e.g.* aerobic and anaerobic treatment) to control five conventional pollutants or pollutant parameters (BOD_5, TSS, Oil & Grease, fecal coliforms, and pH). The BPT technology also provided some nitrification in the course of extended aeration. EPA did not, however, develop limits for ammonia based on this technology. In 2001, EPA proposed new BPT limitations based on Option 2 for non-small facilities in Subcategories A–D (meat slaughterhouses). Option 2 consists of biological treatment followed by complete nitrification to reduce ammonia. Based on comments and the completion of the review and incorporation of data from the detailed surveys, EPA is now also considering establishing limits based on Option 2.5 for BPT for the final rule. EPA estimates that 38 of 39 direct discharging facilities in these subcategories are currently employing Option 2 technology, while 13 of 39 facilities employ Option 2.5.

EPA notes that although more than 97 percent of facilities have the components of Option 2 technology in place, many facilities are not currently achieving the projected Option 2 target effluent concentrations presented in this notice. EPA has calculated the actual baseline discharges using each direct discharge survey recipient's 1999 effluent concentration data (DMR data) and survey information on treatment technology in place (*see* Sections III.B and IV.B for additional discussion of the revised cost and loading methodologies). When estimating the costs of compliance with Option 2, EPA has included costs for treatment optimization for a number of facilities to achieve the Option 2 average target effluent concentration. For example, EPA has included costs, for example, for increased aeration, increased chemical addition, increased sludge handling, additional process controls, in-process sampling and analytical testing, and additional capacity.

EPA also notes that even though one-third of the meat slaughtering (*i.e.*, first processing) facilities are performing partial denitrification (Option 2.5), they are not achieving the target effluent concentrations that EPA currently projects for this option. EPA believes these facilities may not be optimizing their performance, as suggested by reviewing their BOD:TKN ratios (see DCN 100765). Thus, for developing the estimates of compliance costs and pollutant loadings presented in today's notice, EPA transferred the target effluent concentration for Total N from well-operated facilities at Option 2.5 that slaughter poultry (Subcategory K) to red meat facilities in Subcategory A–D. EPA is aware that some commenters believe that red meat facilities may not be able to achieve the same limits as poultry facilities due to higher influent concentrations of nitrogen. EPA is continuing to explore this issue. After reviewing the detailed surveys, EPA believes that in many cases facilities may need additional capacity (through installation of anoxic tanks) and additional pumping (for nitrate recycle) to perform partial denitrification. EPA notes that some facilities may also require additional equipment (*e.g.*,

carbon source, lagoon bypass). See Section III.B for a discussion on the revised cost methodology and Section V.D for a discussion on transferring nitrogen data from poultry to red meat facilities. EPA notes that references, such as Randall, C., Barnard, J., Stensel, H., 1992. Design and retrofit of wastewater treatment plants for biological nutrient removal. Technomic Publishing Co., Inc., Lancaster, Pennsylvania, can provide guidance on how to upgrade treatment systems to perform nutrient removal (see DCN 100771 for other references).

EPA estimates that revising BPT to incorporate limits for Total Nitrogen under Option 2.5 will remove an additional 27.7 million pounds/year of nitrogen from the discharges of facilities in Subcategories A–D. In addition, as compared to the baseline (*i.e.*, pollutant loadings in 1999), Option 2.5 would also remove approximately 755,000 pounds/year of BOD_5, 1.06 million pounds/year of TSS, and 2.7 million pounds/year of ammonia (as nitrogen). However, because Option 2.5 includes the same technology as Option 2 with the addition of denitrification for Total Nitrogen removal, the reductions of BOD_5, TSS, and ammonia (as nitrogen) are the same for Option 2.5 and Option 2 (as revised in today's notice).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. For the BPT cost-reasonableness (*i.e.*, BPT cost and removal comparison) calculation for this industry EPA chose to measure effluent reductions in terms of the sum of removals (in pounds) of BOD_5, Total Nitrogen, and Total Phosphorus so that it could capture the incremental changes between technology options (*e.g.*, Option 2 reduces BOD_5 but does not reduce Total Nitrogen (N), while Option 2.5 additionally reduces Total Nitrogen and Option 2.5+P additionally reduces Total Phosphorus (P)). EPA has made an effort to avoid ''double-counting'' pollutant reductions that would occur if, for example, EPA summed removals of COD and BOD. In past effluent limitations guidelines and standards, BPT cost and removal comparison has been as high as $37/lb-removed in 1999 dollars. As presented in Section X, EPA estimates the BPT cost and removal comparison for Option 2.5 (incremental to the baseline) to be $0.43/pound BOD_5, Total N, and Total P removed (1999$). The incremental BPT cost and removal comparison for moving from Option 2 to Option 2.5 is $0.27 per additional pound Total N removed (1999$) ($BOD_5$ and Total P would be unchanged from Option 2). Note that the only difference between these two options is the level of nitrogen removals. EPA solicits comment on the potential selection of both Option 2 and Option 2.5 for BPT for the final rule.

EPA is also considering a no further regulation option that would continue to rely on existing limitations and standards, along with any more stringent limitations required to attain and maintain water quality standards, including those derived from a wasteload allocation in a TMDL (total maximum daily load). EPA solicits comment on a no further regulation option for facilities in Subcategory A–D.

2. Subcategory K (Poultry Slaughterhouses)

This section describes the options EPA is considering for developing BPT limitations for non-small facilities in the proposed Subcategory K. As discussed in Section X.A, EPA is not presenting revised costs, pollutant reductions, and economic impacts in today's notice for small Subcategory K facilities; however, those results are presented in Section 21.1, DCNs 125803 and 126003 in the public record.

Unlike the meat subcategories discussed in Section IX.B.1, there are no existing effluent guidelines for facilities in the poultry slaughtering subcategory (Subcategory K). EPA proposed to establish the BPT level of control based on Option 3 for non-small facilities and Option 1 for small facilities in this subcategory. Option 1 consists of primary and secondary biological treatment with partial nitrification and disinfection while Option 3 includes primary and secondary biological treatment with complete nitrification, complete denitrification, and disinfection. As discussed previously in IX.A, EPA is now giving less consideration to Option 3. Based on additional review and evaluation of the data and comments, EPA is considering whether to base BPT limitations on Option 2, Option 2.5 or 2.5 + P for non-small facilities in this subcategory for the final rule. EPA is also considering a no-regulation option, in which facilities in Subcategory K would continue to be regulated based on facility-specific BPJ limitations established by the permitting authority, along with any more stringent water-quality based limitations that might be required to attain and maintain water-quality standards, including limitations based on a wasteload allocation in a TMDL.

EPA estimates that 111 of 118 non-small direct discharging facilities in this subcategory currently employ Option 2 technology or more advanced technology, while 45 employ Option 2.5 or more advanced technology, and 17 facilities employ Option 2.5 + P or more advanced technology. As noted above, many of the facilities employing these technology options do not currently achieve the target effluent concentrations that EPA is projecting and so would likely have to undertake additional upgrades, optimization, and process control measures.

EPA estimates that establishing Option 2.5 for BPT would reduce discharges of BOD_5, TSS, COD, Ammonia, and Total N by approximately pounds/year, 1.4 million pounds/year, 6.3 million pounds/year, 470,000 pounds/year, and 3.5 million pounds/year, respectively. Option 2 would remove the same amounts of all pollutants except Total N, which Option 2 is not designed to remove (*i.e.*, Option 2 removes 0 pounds/year of Total N). As discussed above, for the BPT cost and removal comparison calculation for this industry EPA chose to measure effluent reductions in terms of the sum of removals (in pounds) of BOD_5, Total Nitrogen, and Total Phosphorus in assessing effluent reduction benefits. As presented in Section X, EPA estimates the BPT cost and removal comparison for Option 2 (incremental to the baseline) to be $12.89/pound BOD_5, Total N, and Total P removed (1999$). The average BPT cost and removal comparison for Option 2.5 would be $3.93/pound BOD_5, Total N, and Total P removed (1999$). While the incremental BPT cost and removal comparison of Option 2.5 versus Option 2 would be $2.28 per additional pound of Total N (1999$; BOD_5 and Total P would be unchanged from Option 2).

EPA estimates that establishing Option 2.5 + P for BPT would result in the same reductions of BOD_5, TSS, COD, Ammonia, and Total N as Option 2.5 but would also reduce Total Phosphorus by 3.8 million pounds/year. As presented in Section X, EPA estimates the BPT cost and removal comparison for Option 2.5 + P (incremental to the baseline) to be $5.70/pound BOD_5, Total N, and Total P removed (1999$). The incremental cost and removal comparison from Option 2.5 to Option 2.5+P is $7.61/pound Total P removed (1999$) (Total N and BOD_5 would be the same as under Option 2.5). EPA solicits comment on the potential selection of Option 2, Option 2.5, and Option 2.5 + P for BPT for this subcategory for the final rule, and on a no-regulation option

that continues to rely on site-specific BPJ permit limitations.

C. Options Being Considered for Best Available Technology Economically Achievable (BAT)

BAT effluent limitations guidelines represent the best economically achievable performance of facilities in the industrial subcategory or category. The CWA establishes BAT principally as a means of controlling the direct discharge of toxic and nonconventional pollutants. Generally, EPA determines economic achievability on the basis of total costs to the industry to implement the BAT options and the effect of these costs on overall industry and subcategory financial conditions. As with BPT, where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

As discussed in the proposal (67 FR 8619), in recently promulgated effluent guidelines, EPA has relied primarily on the toxic pollutant cost-effectiveness measure for evaluating BAT, however, that measure is less appropriate for evaluating different options to control pollutants from the meat and poultry products industry because this industry's discharges consist of relatively more conventional pollutants and nutrients than toxic pollutants. Therefore, in addition to looking at economic impacts, EPA focused primarily on cost-reasonableness (for total pounds) for BPT, as described above, and nutrient cost-effectiveness in evaluating options for BAT.

EPA calculated the cost-effectiveness of the removal of nutrients for the options considered in the proposal and has done so for the modified options that EPA is considering for the final rule. As a basis of comparison, EPA estimated that the average cost-effectiveness of nutrient removal by POTWs with biological nutrient removal to be $4/lb for nitrogen and $10/lb for phosphorus (67 FR 8622). This is a rough average based on a range of removal costs at POTWs, and is not intended to be a bright line CE cutoff. Rather, it provides a general sense of how the BAT options under consideration for the MPP rule perform relative to POTWs in removing nutrients. The sections below described the options being considered for BAT for the final rule.

1. Subcategories A–D (Meat Slaughterhouses)

EPA proposed to establish the BAT level of regulatory control based on Option 3 (complete nitrification). As discussed in Section IX.A, EPA is now giving less consideration to Option 3. After review and evaluation of the revised and new data, EPA is considering establishing BAT for the non-small meat slaughterhouses based on Option 2.5, Option 2.5 + P or Option 4. EPA is also considering not establishing BAT limitations for these subcategories.

EPA evaluated Option 4 as a basis for establishing BAT more stringent than the BPT level of control. EPA estimates that there are no direct discharge facilities in these subcategories currently operating Option 4 technology. However, there is one indirect discharger in these subcategories and 5 poultry slaughtering facilities (Subcategory K) operating Option 4 technology (or more advanced technology). EPA is considering using data from the indirect discharge facility or transferring data (as is allowed by the CWA) from Subcategory K Option 4 facilities as the basis for BAT for Subcategories A–D. EPA notes that commenters raised concerns over the representativeness of the one indirect discharger facility. EPA has performed a comparison of the influent wastewater characteristics of this facility to the direct discharge facilities in these subcategories. This comparison suggests that the wastewater at this facility may be sufficiently similar to the wastewater at the direct discharge red meat facilities in Subcategories A–D to justify transferring data for development of limitations (see DCN 100766). EPA has addressed differences in treatment performance between the indirect discharger and the direct discharge sites in the cost model through its costing methodology. For example, EPA included costs for a lagoon bypass and additional anoxic tanks, mixers, pumps for facilities with a BOD:TKN ratio below 3 (see Section III.B for additional details on the revised cost methodology).

EPA estimates the pre-tax annualized compliance costs for Option 4 to be $47.6 million (1999$) (which is $5.6 million more than Option 2.5 + P and $35.2 million more than Option 2.5). EPA estimates no closures as a result of BAT based on Option 4, using the closure methodology discussed in Section VI. As a sensitivity analysis, EPA also estimated closures using a less stringent decision rule (closure under 1 out of 5 methodologies rather than at least 3 out of 5). Using this decision rule, EPA estimates one facility closure under Option 4. EPA notes that these estimates only include the 18 estimated total facilities in these subcategories for which EPA has sufficient data to conduct the closure analysis. There may be additional closures in the remaining 21 facilities.

EPA estimates that Option 4 removes 31.3 million pounds/year of nitrogen (3.7 million more pounds/year than Option 2.5 or Option 2.5 + P) and 5.66 million pounds/year of phosphorus (530,000 more pounds/year than Option 2.5 + P). As discussed above, in Subcategories A–D, there is one indirect discharge facility that currently operates Option 4.

EPA is also considering nutrient removal cost-effectiveness when evaluating potential BAT options for this industry. EPA estimates the nutrient cost-effectiveness (based of pounds of nitrogen removed) for Option 4 to be $9.68/pound nitrogen removed (incremental to BPT Option 2.5). EPA estimates the nutrient cost-effectiveness (based on pounds of phosphorus removed) for Option 4 to be $10.59/pound phosphorus removed (incremental to BPT Option 2.5+P). EPA notes that incremental results are presented somewhat differently in this section than in Section X. This section specifically compares the potential BAT option with the potential BPT option(s). EPA solicits comment on the potential selection of Option 4 as the basis of BAT for these subcategories.

EPA is also considering establishing BAT for these subcategories based on Option 2.5 + P. EPA estimates the pre-tax annualized compliance costs for Option 2.5 + P to be approximately $42 million (1999$). EPA estimates that no facilities (out of the 18 facilities analyzed) will close as a result of BAT based on Option 2.5 + P in these subcategories. Under the closure sensitivity analysis discussed above, one of the analyzed facilities would close as a result of Option 2.5+P. EPA estimates that Option 2.5 + P removes the same 2.7 million pounds/year of ammonia (as nitrogen) and 27.7 million pounds/year of total nitrogen as Option 2.5 but removes an additional 5.1 million pounds/year of phosphorus. In Subcategories A–D, there are 13 of 39 direct discharge facilities that currently operate Option 2.5 technology (though not necessarily achieving the projected Option 2.5 target effluent concentrations) and there are 6 direct dischargers and one indirect discharger that employ phosphorus removal (under option 2 + P or Option 4). However, EPA notes there are no facilities that

employ Option 2.5 + P in these subcategories, although this combination is well demonstrated in the poultry industry (10 direct discharge facilities operate Option 2.5 + P).

As discussed above, EPA is also considering nutrient removal cost-effectiveness when evaluating potential BAT options for this industry. EPA estimates the nutrient cost-effectiveness (based on pounds of phosphorus removed) for Option 2.5 + P to be $5.78/pound phosphorus removed (incremental to BPT Option 2.5). EPA solicits comment on the potential selection of Option 2.5 + P as the basis of BAT for these subcategories.

EPA is also evaluating whether it should establish BAT equal to Option 2.5. Under this approach, the cost of the BAT limitations would be $12.4 million (1999$). Moreover, there are no facility closures (out of the 18 facilities analyzed) associated with the option under the primary closure analysis and one facility closure under the sensitivity analysis. BAT limitations based on Option 2.5, as explained above, would result in removal of 2.7 million pounds/year of ammonia as nitrogen and 27.7 million pounds/year of total nitrogen. The nutrient cost-effectiveness of Option 2.5 relative to BPT Option 2 would be $0.27/pound total nitrogen removed. EPA solicits comment on the potential selection of Option 2.5 as the basis for BAT for these subcategories.

In its evaluation of effluent limitations guidelines for this subcategory, one option EPA is reviewing is the option not to establish BAT limitations. Section 301(b)(2)(A) of the CWA authorizes EPA to establish BAT limitations for categories of sources that limit discharges of toxic and non-conventional pollutants. In establishing BAT limitations, EPA considers a number of factors specified in the statute (*e.g.*, age of equipment and facilities, engineering aspects of various types of controls, non-water quality environmental impacts), including other factors deemed appropriate by the Administrator. Section 304(b)(2)(B). The bulk of the pollutant discharges from this category are conventional and non-conventional pollutant discharges, with no significant discharges of toxic pollutants. The non-conventional pollutant discharges from this category consist largely of nutrients. In certain cases, nutrients may represent a significant water quality problem for specific water bodies. Where necessary to protect local water quality, individual dischargers may currently be subject to water quality-based effluent limitations for nutrient discharges. EPA is evaluating whether it is appropriate to establish national BAT limitations for this subcategory more stringent than BPT limitations or whether these nutrient discharges are more appropriately addressed on a case-by-case basis in individual permits based on applicable water quality standards. EPA will be examining data on water quality impacts from MPP facilities as part of its benefits analysis and specifically the extent to which such discharges significantly contribute to water quality impairments from nutrients. EPA requests comment on not establishing BAT limitations for these subcategories.

2. Subcategory K (Poultry Slaughterhouses)

This section describes the options EPA is considering for BAT for non-small facilities in the proposed Subcategory K. As discussed in Section IX.A, EPA is not presenting revised costs, pollutant reductions, and economic impacts in today's notice for small Subcategory K facilities; however, those results are presented in Section 21.1, DCNs 125803 and 126003 of the public record.

EPA proposed to establish the BAT level of regulatory control based on Option 3 (complete nitrification) for non-small facilities in this subcategory. As discussed in Section IX.A, EPA is now giving less consideration to Option 3. After review and evaluation of the revised and new data, EPA is considering establishing BAT for these facilities based on either Option 2.5, Option 2.5 + P, or Option 4. As with Subcategories A–D, discussed above, EPA is also considering not establishing BAT limitations for this subcategory.

EPA is considering establishing BAT for this subcategory based on Option 4. EPA estimates the pre-tax annualized compliance costs for Option 4 to be $83.4 million (1999$) (which is $37.9 million more than Option 2.5 + P and $67 million more than Option 2.5). EPA estimates that 7 facilities and 1 company will close as a result of BAT based on Option 4 under both the primary and sensitivity closure analysis. Note that these estimates only include the 34 estimated total facilities in this subcategory for which EPA has sufficient data to conduct the closure analysis. There may be additional closures in the remaining 84 facilities. The company level results are based on the analysis of 26 companies. While EPA does not have an estimate of the total number of companies operating facilities in this subcategory, EPA believes these 26 companies account for the majority of Subcategory K facilities (see Section X.A.2.c for further discussion). As discussed in Section X, based on EPA's market analysis, the maximum projected price increase occurs under Option 4 but is less than 0.1 percent of baseline price for chicken and turkey. In addition, the domestic production of meat products, and therefore industry employment, is projected to decrease by about 0.04 percent under Option 4.

EPA estimates that Option 4 removes an additional 10.9 million pounds/year of nitrogen compared to Option 2.5 or Option 2.5 + P and an additional 534,000 pounds/year of phosphorus compared to Option 2.5 + P. In Subcategory K, there are 5 of 118 direct discharge facilities that currently operate with Option 4 pollution control technology (or more advanced technology).

As discussed above, EPA is also considering nutrient removal cost-effectiveness when evaluating potential BAT options for this industry. EPA estimates the nutrient cost-effectiveness (based on pounds of nitrogen removed) for Option 4 to be $6.14/pound nitrogen removed (incremental to BPT Option 2.5). EPA estimates the nutrient cost-effectiveness (based on pounds of phosphorus removed) for Option 4 to be $70.96/pound phosphorus removed (incremental to BPT Option 2.5 + P). EPA solicits comment on the potential selection of Option 4 as the basis of BAT for this subcategory.

EPA is also considering establishing BAT for this subcategory based on Option 2.5 + P. EPA estimates the pre-tax annualized compliance costs for Option 2.5 + P to be approximately $45.5 million (1999$) (which is approximately $29 million more than Option 2.5). EPA estimates that no facilities (of the 34 facilities analyzed) and one company (if the 13 poultry companies analyzed) will close as a result of BAT based on Option 2.5 + P under either the primary or sensitivity closure analyses. EPA notes that the poultry company that is projected to close did not provide facility level financial information; therefore, the facilities owned by this company could not be analyzed. EPA estimates that Option 2.5 + P removes an additional 3.8 million pounds/year of phosphorus as compared to Option 2.5. In Subcategory K, there are 17 of 118 direct discharge facilities that currently operate Option 2.5 + P technology (or more advanced technology). EPA estimates the nutrient cost-effectiveness (based on pounds of phosphorus removed) for Option 2.5 + P to be $7.61/pound phosphorus removed (incremental to BPT Option 2.5). EPA solicits comment on the potential

selection of Option 2.5 + P as the basis of BAT for this subcategory.

EPA is also considering whether it should base BAT limitations on Option 2.5. As previously noted, EPA estimates the pre-tax annualized compliance costs for Option 2.5 to be approximately $16.3 million (1999$). EPA estimates that none of the analyzed facilities will close as a result of compliance with Option 2.5 limitations in this subcategory under either the primary or sensitivity closure analyses. This option would remove an additional 3.5 million pounds of Total N per year relative to Option 2 (as Option 2 is not designed to remove Total N), for an incremental nutrient cost effectiveness of $2.28/pound Total N removed (1999$). EPA solicits comment on the potential selection of Option 2.5 as the basis of BAT for this subcategory. EPA is also considering not establishing BAT limitations for this subcategory for the same reasons discussed above for Subcategories A–D, and solicits comment on this option.

D. Options Being Considered for New Source Performance Standards (NSPS)

When establishing the NSPS level of control, EPA considers the barrier that compliance costs due to the effluent guidelines regulation pose to entry into the industry for a new facility. The barrier to entry analysis compares estimated average incremental facility or company capital costs incurred to meet the effluent guidelines to average total assets of existing facilities or companies. To the extent that potential new entrants have similar total assets to existing industry participants, this provides a proxy for the potential barrier to entry that new facility compliance costs may represent. EPA does not have data on the assets of potential new entrants because in general they cannot be identified in advance. The analysis was performed to evaluate the effect of the MPP rule on the costs faced by new entrants into the meat and poultry products industry. Increased start-up costs resulting from the capital costs of the MPP regulation (as revised in this notice) may prevent entrepreneurs from entering the industry. The calculated ratio of average capital costs to average total assets measures the potential for barriers to entry due to the MPP rule. If the barrier to entry ratio is large, then the possibility exists that the rule will discourage entry into the meat and poultry products market. EPA solicits comment on other measures of ''barrier to entry'' that would be appropriate for this industry.

For both the red meat (Subcategories A–D) and Poultry (Subcategory K) slaughtering facilities, EPA is considering setting the NSPS limitations equivalent to BAT or the next level of stringency. For example, if Option 2.5 is the basis for BAT for the final rule, then EPA would consider Option 2.5 as well as Option 2.5 + P for new sources and if Option 2.5 + P is the basis for BAT, then EPA would consider Option 2.5 + P as well as Option 4 for new sources. EPA has estimated the ratio of capital costs to assets for each of the options (see Section X of today's notice). If EPA did not establish BAT limitations for existing facilities then EPA would establish NSPS equivalent to BPT or the next level of stringency. EPA solicits comment on NSPS for all MPP industry subcategories.

X. Revised Estimates of Costs, Loadings, Economic Impacts and Cost-Effectiveness

A. Revised National Estimates of Costs, Loadings, and Economic Impacts

EPA is providing the results of its preliminary economic analysis based on revised costs and selected changes in methodologies discussed above in Sections III and IV. All other aspects of the economic analysis methodology remain as described at proposal. Analyses presented in this section incorporate costs and loadings that reflect the sample weights discussed in Section III.B.3. of this document.

Results presented here remain in 1999 dollars, for purpose of comparison with the results of the proposed rule analysis. The analysis EPA will prepare for the final rule will be presented in 2002 dollars.

1. Results Using the Economic Impact Analysis Methodologies

Many of the surveyed facilities did not provide enough financial data for EPA to perform an adequate economic impact analysis. Thus, the total number of facilities in each class or subcategory is not equivalent to the number of facilities analyzed. In Subcategories A through D, 21 of 39 facilities in the national estimate could not be analyzed due to lack of data. In Subcategory K, 84 of 118 facilities in the national estimate were not analyzed due to lack of data. Thus, the facility closure analysis represents projected closures at only 46 percent (18/39) of facilities in Subcategories A–D and 29 percent (34/118) of facilities in Subcategory K nationally. There may be additional closures at the remaining 54 percent and 71 percent of Subcategory A–D facilities and Subcategory K facilities, respectively, that could not be analyzed.

For cost annualization and the closure analysis, a 6.6 percent discount rate was used if facilities did not provide a usable discount rate in their survey data. The 6.6 percent discount rate is a weighted average of the discount rate data provided in the surveys. If the facility provided a nominal discount rate greater than 3 percent but less than 19 percent in their survey then that value was used to run the impact analysis. Discount rates outside that range were deemed to reflect internal hurdle rates rather than the opportunity cost of capital.

2. Summary of Results

a. National Costs

Total pretax annualized costs of the rule range from $13 million under Option 2 to $131 million under Option 4. Pretax annualized costs per facility are consistently larger in Subcategories A though D ($127,000 to $1.2 million) than in Subcategory K ($71,000 to $707,000). See Table X.A–1 for compliance costs by subcategory and treatment option.

TABLE X.A—1.—TOTAL AND AVERAGE COMPLIANCE COSTS BY SUBCATEGORY AND OPTION

Option	Total costs ($000)			Average costs ($000)		
	Capital	Post-tax annualized	Pre-tax annualized	Capital	Post-tax annualized	Pre-tax annualized
Subcategories A through D (39 facilities)						
Option 2	$6,646	$3,037	$4,951	$170.4	$77.9	$127.0
Option 2.5	67,885	8,986	12,359	1,740.6	230.4	316.9
Option 2 + P	36,385	23,089	35,574	933.0	592.0	912.1
Option 2.5 + P	86,118	27,875	42,004	2,208.1	714.7	1,077.0

TABLE X.A—1.—TOTAL AND AVERAGE COMPLIANCE COSTS BY SUBCATEGORY AND OPTION—Continued

Option	Total costs ($000)			Average costs ($000)		
	Capital	Post-tax annualized	Pre-tax annualized	Capital	Post-tax annualized	Pre-tax annualized
Option 4	104,090	31,418	47,627	2,669.0	805.6	1,221.2
Subcategory K (118 facilities)						
Option 2	18,856	6,656	8,333	159.8	56.4	70.6
Option 2.5	74,219	13,321	16,329	629.0	112.9	138.4
Option 2 + P	65,644	29,683	38,999	556.3	251.6	330.5
Option 2.5 + P	99,509	34,743	45,492	843.3	294.4	385.5
Option 4	299,178	65,400	83,368	2,535.4	554.2	706.5

b. National Loadings

Table X.A–2 shows estimated pollutant reductions for each treatment option. The conventional pollutant loadings (*i.e.* 5-Day Biological Oxygen Demand, Total Suspended Solids and Oil and Grease) removed for Options 2, 2+P, 2.5 and 2.5+P are identical for Subcategories A through D and Subcategory K, respectively. Options 2+P, 2.5 and 2.5+P represent additional removals of nutrients, not conventional pollutants, over Option 2. Option 4 provides additional removals of both nutrients and conventional pollutants relative to other options.

TABLE X.A–2.—REMOVAL OF SPECIFIED POLLUTANTS BY SUBCATEGORY AND OPTION [1]

Subcategory	Pollutant	Removals (pounds per year)				
		Option 2	Option 2.5	Option 2+P	Option 2.5+P	Option 4
A through D	5-Day Biochemical Oxygen Demand.	755,213	755,213	755,213	755,213	795,121
	Total Suspended Solids	1,058,991	1,058,991	1,058,991	1,058,991	1,236,504
	Chemical Oxygen Demand	0	0	0	0	0
	Carbonaceous Biochemical Oxygen Demand.	633,168	633,168	633,168	633,168	633,168
	Ammonia as Nitrogen	2,717,147	2,717,147	2,717,147	2,717,147	2,789,738
	Total Nitrogen	0	27,688,678	0	27,688,678	31,331,318
	Total Phosphorus	0	0	5,128,793	5,128,793	5,659,799
	Nitrate/Nitrite	0	26,910,414	0	26,910,414	28,762,544
	Total Kjeldahl Nitrogen	2,669,042	2,669,042	2,669,042	2,669,042	2,690,827
	Oil & Grease (HEM)	0	0	0	0	0
K	5-Day Biochemical Oxygen Demand.	646,527	646,527	646,527	646,527	846,484
	Total Suspended Solids	1,420,573	1,420,573	1,420,573	1,420,573	2,728,104
	Chemical Oxygen Demand	6,278,429	6,278,429	6,278,429	6,278,429	10,788,159
	Carbonaceous Biochemical Oxygen Demand.	707,270	707,270	707,270	707,270	707,270
	Ammonia as Nitrogen	469,249	469,249	469,249	469,249	664,527
	Total Nitrogen	0	3,509,950	0	3,509,950	14,427,113
	Total Phosphorus	0	0	3,830,011	3,830,011	4,363,815
	Nitrate/Nitrite [2]	0	6,156,008	0	6,156,008	13,325,056
	Total Kjeldahl Nitrogen	307,004	307,004	307,004	307,004	975,539
	Oil & Grease (HEM)	320,986	320,986	320,986	320,986	346,840

[1] Incremental to baseline of current performance. Current performance based on summarized 1999 DMR data provided in response to detailed surveys. Pollutant loading for various treatment options based on sampling data, survey information, and DMR data. (*See* Section IV for discussion of loadings methodology).

[2] EPA recognizes that, in theory, total nitrogen should be less than nitrate/nitrite as nitrogen because total nitrogen is the sum of nitrate/nitrite as nitrogen and total kjeldahl nitrogen. However, the target effluent concentrations were taken from different sets of facilities (*i.e.* those that provided total nitrogen data and those that provided nitrate/nitrite as nitrogen data). EPA anticipates regulating total nitrogen, not nitrate/nitrite nitrogen for the final rule.

c. Closure Analysis

A facility (or company) forecast to have a negative net present value (NPV) of net income under at least 3 of 5 methods (described in Section VI.A) prior to regulatory costs are called ''baseline closures.'' In Subcategories A through D there are two baseline closures; in Subcategory K there are 10 baseline closures. The economic impact of the rule on ''baseline closures'' cannot be assessed using the closure model. Under the sensitivity analysis, in which a negative NPV under only 1 method is sufficient to project a closure, EPA estimates that 7 facilities are baseline closures in Subcategories A–D and 15 facilities are baseline closures in Subcategory K.

In the facility level closure analysis, no facility closures are projected under any options for Subcategories A through D under the primary analysis for the 18 out of 39 facilities analyzed and 1 facility closure is projected for all options under the sensitivity analysis. For Subcategory K, under either the primary or sensitivity analysis seven facilities from the 34 facilities out of the

118 analyzed are projected to close under Option 4 and no facility closures are projected under other treatment options.

TABLE X.A–3.—SUMMARY OF PROJECTED FACILITY CLOSURE IMPACTS BY SUBCATEGORY AND OPTION (PRIMARY ANALYSIS)

Option	Number of facilities	Total revenues ($000)	Employees
Subcategories A through D			
Total Facilities Analyzed [1]	18	$9,303,506	48,114
Baseline Closures	2	1,000,000–2,500,000	5,000–7,500
Option 2 Closures	0	0	0
Option 2 + P Closures	0	0	0
Option 2.5 Closures	0	0	0
Option 2.5 + P Closures	0	0	0
Option 4 Closures	0	0	0
Subcategory K			
Total Facilities Analyzed [2]	34	$4,023,230	112,491
Baseline Closures	10	1,584,600	13,260
Option 2 Closures	0	0	0
Option 2 + P Closures	0	0	0
Option 2.5 Closures	0	0	0
Option 2.5 + P Closures	0	0	0
Option 4 Closures	7	250,000–500,000	2,500—5,000

[1] Of the 39 facilities estimated to be in Subcategories A through D, EPA was able to analyze data from surveys representing 18 facilities; the remaining surveys (representing 21 facilities) did not provide sufficient data to be analyzed, and therefore, the number of closures among these facilities is not reflected in the table and is unknown.

[2] Of the 118 facilities estimated to be in Subcategory K, EPA was able to analyze data from surveys representing 34 facilities; the remaining surveys (representing 84 facilities) did not provide sufficient data to be analyzed, and therefore, the number of closures among these facilities is not reflected in the table and is unknown.

In the primary company level closure analysis, one poultry company is projected to close under Option 2 + P, Option 2.5 + P, and Option 4. This company employs between 2,500 and 5,000 workers. The poultry company that is projected to close did not provide facility level financial information, therefore the facilities owned by this company could not be analyzed. Under the sensitivity analysis, the same poultry company (under the same options) is projected to close as well as one red meat company under all treatment options and one mixed meat (*i.e.,* company owns both poultry and red meat facilities) company under Options 2 + P, 2.5 + P, and Option 4.

TABLE X.A–4.—SUMMARY OF PROJECTED COMPANY CLOSURE IMPACTS BY SUBCATEGORY AND OPTION (PRIMARY ANALYSIS)

Option	Baseline conditions and projected incremental closure impacts [1]		
	Number of companies	Total revenues ($millions)	Employees
Red Meat (Predominantly Own Facilities in Subcategories A through I)			
Total Companies Analyzed	9	$29,949	80,755
Baseline Closures	1	250–500	1,000–4,000
Option 2 Closures	0	0	0
Option 2 + P Closures	0	0	0
Option 2.5 Closures	0	0	0
Option 2.5 + P Closures	0	0	0
Option 4 Closures	0	0	0
Poultry (Predominantly Own Facilities in Subcategories K and L)			
Total Companies Analyzed	13	$15,455	136,000
Baseline Closures	6	3,400	31,190
Option 2 Closures	0	0	0
Option 2 + P Closures	1	100–150	2,500–5,000
Option 2.5 Closures	0	0	0
Option 2.5 + P Closures	1	100–150	2,500–5,000
Option 4 Closures	1	100–150	2,500–5,000
Mixed (Own Facilities in Both Red Meat and Poultry Subcategories)			
Total Companies Analyzed	4	89,439	184,834

TABLE X.A–4.—SUMMARY OF PROJECTED COMPANY CLOSURE IMPACTS BY SUBCATEGORY AND OPTION (PRIMARY ANALYSIS)—Continued

Option	Baseline conditions and projected incremental closure impacts [1]		
	Number of companies	Total revenues ($millions)	Employees
Baseline Closures	0	N/A	N/A
Option 2 Closures	0	0	0
Option 2 + P Closures	0	0	0
Option 2.5 Closures	0	0	0
Option 2.5 + P Closures	0	0	0
Option 4 Closures	0	0	0

[1] Projected revenue and employment impacts are presented as a range to prevent the disclosure of confidential business information.

Company level results are unweighted because the survey sampling frame was stratified on the basis of facility level data. Therefore, the facility level and company level results are not additive. Because of the large number of facilities that were unable to submit financial data in their survey, EPA performed a subsidiary company level analysis to provide a consistency check on the primary facility level analysis. EPA has estimated that the 26 companies in the company level analysis own at least 117 of the 157 in-scope facilities that EPA project will be subject to regulation in Subcategories A-D and K.

d. Altman Z′ Analysis

EPA used the Altman Z′ ratio to assess the baseline financial condition of MPP firms and the incremental impacts of the rule on their financial health. Note this analysis includes the same 26 companies analyzed for company closure analysis. In the baseline, the Altman Z′ analysis shows that 7 red meat companies and 8 poultry companies are considered financially healthy. One red meat company, 5 poultry companies, and 3 mixed meat companies have Altman Z′ scores in the indeterminate range for financial health; 1 red meat company and 1 mixed meat company are considered financially stressed. Under Option 4, the Altman Z′ score for one poultry company changed from the financially healthy to the indeterminate range (represented by the +1 and −1 on Table X.A–5).

TABLE X.A–5.—PROJECTED IMPACTS ON COMPANY ALTMAN Z' SCORE BY MEAT TYPE AND OPTION

Option	Number of companies with baseline Altman Z' score in specified range and incremental changes in score		
	Financially healthy	Indeterminate	Bankruptcy likely
Red Meat (predominantly own facilities in Subcategories A through I)			
Baseline	7	1	1
Option 2	0	0	0
Option 2 + P	0	0	0
Option 2.5	0	0	0
Option 2.5 + P	0	0	0
Option 4	0	0	0
Poultry (predominantly own facilities in Subcategories K and L)			
Baseline	8	5	0
Option 2	0	0	0
Option 2 + P	0	0	0
Option 2.5	0	0	0
Option 2.5 + P	0	0	0
Option 4	−1	+1	0
Mixed (own facilities in both red meat and poultry subcategories)			
Baseline	0	3	1
Option 2	0	0	0
Option 2 + P	0	0	0
Option 2.5	0	0	0
Option 2.5 + P	0	0	0
Option 4	0	0	0

Note: A change from one state (*e.g.,* financially healthy) to another state (*e.g.,* indeterminate) is indicated by ''−1'' and ''+1''.

e. Sales Test

None of the analyzed facilities are projected to incur costs exceeding 3 percent of revenues (pre-tax). In addition, none of the analyzed facilities in Subcategories A through D are projected to incur costs exceeding 1 percent of revenues under any option. In Subcategory K, no analyzed facilities

are projected to incur costs exceeding 1 percent of revenues under Option 2, Option 2 + P, or Option 2.5, while 4 analyzed facilities are projected to incur costs exceeding 1 percent of revenues under Option 2.5 + P and 17 analyzed facilities under Option 4.

TABLE X.A–6.—FACILITIES WITH ANNUALIZED COSTS EXCEEDING 3 PERCENT OF REVENUES BY SUBCATEGORY AND OPTION

Option	Facilities with annualized costs exceeding 3 percent of revenues		Facilities with annualized costs exceeding 1 percent of revenues	
	Pre-tax	Post-tax	Pre-tax	Post-tax
Subcategories A through D (18 facilities analyzed) [1]				
Option 2	0	0	0	0
Option 2 + P	0	0	0	0
Option 2.5	0	0	0	0
Option 2.5 + P	0	0	0	0
Option 4	0	0	0	0
Subcategory K (34 facilities analyzed) [2]				
Option 2	0	0	0	0
Option 2 + P	0	0	0	0
Option 2.5	0	0	0	0
Option 2.5 + P	0	0	4	0
Option 4	0	0	17	7

[1] Of the 39 facilities estimated to be in Subcategories A through D, EPA was able to analyze data from surveys representing 18 facilities; the remaining surveys (representing 21 facilities) did not provide sufficient data to be analyzed, and therefore, the number of closures among these facilities is not reflected in the table and is unknown.

[2] Of the 118 facilities estimated to be in Subcategory K, EPA was able to analyze data from surveys representing 34 facilities; the remaining surveys (representing 84 facilities) did not provide sufficient data to be analyzed, and therefore, the number of closures among these facilities is not reflected in the table and is unknown.

f. Market Level Impacts

EPA analyzed the impact of the rule on market price, domestic supply, domestic consumption, and international trade of four meat types (beef, pork, chicken, and turkey). Pre-tax annualized compliance costs per pound of carcass weight for each of the four meat types measures the vertical shift in the supply curve in response to the effluent limitations guidelines. The most appropriate measure of the shift in supply is the cost per pound of total industry production because: (1) The majority of facilities incur no costs, and (2) the competition from facilities that do not incur costs will discourage affected facilities from increasing price by the full cost per pound of the ELG.

The results of the market analysis show that the decrease in supply will be smallest for pork, where the costs per pound of total production range from $0.000014 under Option 2 to $0.0005 under Option 4, and largest for turkey with costs per pound of total production ranging from $0.00036 under Option 2 to $0.0019 under Option 4. The maximum projected price increase is less than 0.1 percent of baseline price for chicken and turkey (under Option 4); price is projected to increase less than 0.04 percent of baseline for beef and pork under any option.

The domestic production of meat products, and therefore industry employment, is projected to decrease by about 0.04 percent under Option 4, and by lesser amounts under all other options for all meat types. In general, impacts to domestic consumption of meat products are somewhat smaller than impacts to domestic supply due to partially offsetting increases in meat imports.

Impacts on meat exports are of particular concern to the poultry sector. Exports are the means the poultry industry has used to sustain growth. Exports are also used to balance domestic preferences for white meat poultry products with the necessary production of dark meat as a byproduct of white meat production; dark poultry meat is preferred in other parts of the world. Meat exports are projected to decrease by less than 0.06 percent for poultry meat under all options except Option 4 which decreases by 0.11 percent.

TABLE X.A–7.—PROJECTED IMPACTS ON MEAT PRODUCT MARKETS

Option	Price ($/lb.)	Domestic supply (lbs. × 1 mil.)	Domestic demand (lbs. × 1 mil.)	Quantity imported (lbs. × 1 mil.)	Quantity exported (lbs. × 1 mil.)	Compliance costs per pound
Beef						
Baseline	$1.11050	26,386.0	26,843.0	2,874.0	2,417.0	.....
Option 2	1.11058	26,384.1	26,841.8	2,874.4	2,416.7	$0.00016
Option 2 + P	1.11085	26,378.7	26,838.7	2,875.8	2,415.8	0.00065
Option 2.5	1.11065	26,382.9	26,841.2	2,874.8	2,416.5	0.00028
Option 2.5 + P	1.11092	26,377.3	26,837.8	2,876.2	2,415.6	0.00078
Option 4	1.11098	26,376.2	26,837.3	2,876.5	2,415.4	0.00088

TABLE X.A–7.—PROJECTED IMPACTS ON MEAT PRODUCT MARKETS—Continued

Option	Price ($/lb.)	Domestic supply (lbs. × 1 mil.)	Domestic demand (lbs. × 1 mil.)	Quantity imported (lbs. × 1 mil.)	Quantity exported (lbs. × 1 mil.)	Compliance costs per pound
Pork						
Baseline	1.00380	19,278.00	18,827.0	827.00	1,278.00	.....
Option 2	1.00382	19,278.04	18,827.1	827.02	1,277.97	0.00001
Option 2 + P	1.00402	19,275.6	18,825.3	827.24	1,277.56	0.00042
Option 2.5	1.00390	19,277.0	18,826.3	827.11	1,277.81	0.00018
Option 2.5 + P	1.00407	19,275.1	18,825.0	827.29	1,277.47	0.00050
Option 4	1.00410	19,274.9	18,824.8	827.33	1,277.39	0.00056
Chicken						
Baseline	0.5807	29,741.0	24,826.0	5.0000	4,920.0	.....
Option 2	0.5808	29,739.8	24,825.3	5.0005	4,919.5	0.00016
Option 2 + P	0.5810	29,734.9	24,822.6	5.0026	4,917.3	0.00086
Option 2.5	0.5808	29,738.6	24,824.7	5.0010	4,919.0	0.00033
Option 2.5 + P	0.5810	29,733.9	24,822.1	5.0031	4,916.9	0.00100
Option 4	0.5812	29,727.8	24,818.3	5.0054	4,914.5	0.00184
Turkey						
Baseline	0.6898	5,297.0	4,919.2	1.2500	379.0	.....
Option 2	0.6899	5,296.6	4,918.9	1.2502	378.9	0.00036
Option 2 + P	0.6900	5,296.1	4,918.5	1.2505	378.8	0.00085
Option 2.5	0.6900	5,296.3	4,918.7	1.2503	378.9	0.00058
Option 2.5 + P	0.6901	5,295.8	4,918.3	1.2506	378.8	0.00106
Option 4	0.6903	5,294.8	4,917.4	1.2510	378.7	0.00191

B. Revised National Estimates of Cost Reasonableness and Cost-Effectiveness

EPA performed a revised cost reasonableness and nutrient cost-effectiveness analysis based on the revised estimates of costs, loadings and removals described previously. As noted in Section X, incremental results are presented somewhat differently here than in that section, reflecting changes associated with increasingly stringent options irrespective of which technology standard (BPT vs. BAT) they are being considered under.

1. Cost Reasonableness of Pollutant Removals: BPT Cost and Removal Comparison

Based on BOD, total phosphorus, and total nitrogen, average BPT cost and removal comparison of pollutant removals ranges from $0.43 per pound (Option 2.5) to $6.56 per pound (Option 2) in Subcategories A through D, and from $3.93 per pound (Option 2.5) to $12.89 per pound (Option 2) in Subcategory K.

TABLE X.B–1.—BPT COST & REMOVAL COMPARISON

Option	Pre-tax annualized costs (1999$)	Total pounds removed [1]	Average BPT cost & removal comparison (1999$/pound)	Incremental BPT cost & removal comparison (1999$/pound)
Subcategories A through D				
Baseline	0	0	NA	NA
Option 2	$4,951,238	755,213	$6.56	$6.56
Option 2.5	12,359,499	28,443,891	0.43	0.27
Option 2 + P	35,573,746	5,884,007	6.05	DOM
Option 2.5 + P	42,004,409	33,572,685	1.25	0.23
Option 4	47,626,564	37,786,238	1.26	1.33
Subcategory K				
Baseline	0	0	NA	NA
Option 2	8,333,047	646,527	12.89	12.89
Option 2.5	16,328,846	4,156,478	3.93	2.28
Option 2 + P	38,998,615	4,476,538	8.71	70.83
Option 2.5 + P	45,492,024	7,986,488	5.70	1.85
Option 4	83,368,375	19,637,412	4.25	3.25

[1] Total pounds of: BOD, Total Phosphorus, and Total Nitrogen.

DOM: Option is dominated because it has higher cost and lower removals. Note however that the composition of removals is different with Option 2 + P having higher Total P and lower Total N removals than Option 2.5 (see Section X.B.2).

2. Cost Effectiveness of Nitrogen and Phosphorus Removals

The tables in this section provide both the incremental and average nutrient cost-effectiveness values. As a basis of comparison, EPA estimated that the average cost-effectiveness of nutrient removal by POTWs with biological nutrient removal to be $4/lb for nitrogen and $10/lb for phosphorus (67 FR 8622). EPA notes that Table X.B–2 displays the results for the nitrogen cost-effectiveness and, therefore, includes only options specifically designed to remove total nitrogen (*i.e.*, Option 2.5 and Option 4). Similarly, Table X.B–3 displays the results for the phosphorus cost-effectiveness and, therefore, only includes those options with a chemical phosphorus treatment step (*i.e.*, Option 2 + P and Option 4). Option 2.5 + P is also omitted from Table X.B–2 and Table X.B–3 because it provides no additional Total N removals relative to Option 2.5 and no additional Total P removals relative to Option 2 + P, respectively. Average cost-effectiveness (cost per pound of nitrogen removed) ranges from $0.45 (Option 2.5) to $1.52 (Option 4) in Subcategories A through D, and from $4.65 (Option 2.5) to $5.78 per pound (Option 4) in Subcategory K. The incremental cost-effectiveness from Option 2.5 to Option 4 is $9.68/pound of nitrogen removed for Subcategories A–D and $6.14/pound nitrogen removed for Subcategory K. Average cost-effectiveness (cost per pound of phosphorus removed) ranges from $6.94 (Option 2+P) to $8.41 (Option 4) in Subcategories A through D, and from $10.18 (Option 2+P) to $19.10 per pound (Option 4) in Subcategory K. The incremental cost-effectiveness from Option 2 + P to Option 4 is $22.70/pound of phosphorus removed for Subcategories A–D and $83/pound phosphorus removed for Subcategory K. EPA notes that the nutrient cost-effectiveness numbers presented below represent upper bounds because they assign all the costs for an option to either Total N or Total P removal even though the options also remove other pollutants. EPA used this approach to provide a conservative estimate of cost-effectiveness and because it does not have a good basis to divide up removal costs among pollutants.

TABLE X.B–2.—NUTRIENT COST-EFFECTIVENESS: TOTAL NITROGEN

Option	Pre-tax annualized costs (1999$)	Pounds removed	Average cost effectiveness (1999$/pound)	Incremental cost effectiveness (1999$/pound)
Subcategories A through D				
Baseline	$0	0	NA	NA
Option 2.5	12,359,499	27,688,678	$0.45	$0.45
Option 4	47,626,564	31,331,318	1.52	9.68
Subcategory K				
Baseline	0	0	NA	NA
Option 2.5	16,328,846	3,509,950	4.65	4.65
Option 4	83,368,375	14,427,113	5.78	6.14

TABLE X.B–3.—NUTRIENT COST-EFFECTIVENESS: TOTAL PHOSPHORUS

Option	Pre-tax annualized costs (1999$)	Pounds removed	Average cost effectiveness (1999$/pound)	Incremental cost effectiveness (1999$/pound)
Subcategories A through D				
Baseline	$0	0	NA	NA
Option 2 + P	35,573,746	5,128,793	$6.94	$6.94
Option 4	47,626,564	5,659,799	8.41	22.70
Subcategory K				
Baseline	0	0	NA	NA
Option 2 + P	38,998,615	3,830,011	10.18	10
Option 4	83,368,375	4,363,815	19.10	83

C. Results of Barrier to Entry Analysis for New Sources

As discussed in Section X.D, when establishing the NSPS level of control, EPA considers the barrier that compliance costs due to the effluent guidelines regulation pose to entry into the industry for a new facility. The barrier to entry analysis compares estimated average incremental facility or company capital costs incurred to meet the effluent guidelines to average total assets of existing facilities. Tables X.C–1 and X.C–2, below, provide the results of the facility level and company level ratios. The facility level ratio of capital costs to total assets ranges from 0.1 percent under Option 2 to 2.1 percent under Option 4 in Subcategories A through D, and from 0.4 percent under Option 2 to 7.8 percent under Option 4 in Subcategory K. Average capital costs of $3.0 million per facility in Subcategories A through D result in a 2.1 percent ratio and average capital costs of $3.1 million per facility in Subcategory K result in a 7.8 percent ratio. The company level ratio of capital costs to total assets ranges from 0.02 percent under Option 2 to 0.3 percent under Option 4 for red meat, and from 0.1 percent under Option 2 to 1.7 percent under Option 4 for poultry companies. EPA notes that companies may own both red meat and poultry facilities across more than one subcategory. Poultry companies show the larger impacts as compared to red meat and mixed meat companies.

TABLE X.C–1.—SUMMARY OF FACILITY LEVEL RATIO OF CAPITAL COSTS TO ASSETS (BARRIER TO ENTRY)

[In percent]

Subcategory	Option 2	Option 2.5	Option 2.5 + P	Option 4
A–D	0.1	1.2	1.6	2.1
K	0.4	1.5	1.7	7.8

Note: Percentages are based on those facilities for which EPA had asset data and compliance costs.

TABLE X.C–2.—SUMMARY OF COMPANY LEVEL RATIO OF CAPITAL COSTS TO ASSETS (BARRIER TO ENTRY)

[In percent]

Subcategory	Option 2	Option 2.5	Option 2.5 + P	Option 4
Red Meat	0.02	0.2	0.3	0.3
Poultry	0.1	0.4	0.6	1.7
Mixed Meat	0.0	0.2	0.2	0.3

Note: Percentages are based on those companies for which EPA had complete asset data and compliance costs.

XI. Solicitation of Comment

The following discussion summarizes some of those issues raised by new information and comments on the proposal for which EPA is requesting comment. Other solicitations for information, data, or comment are contained within the text of the notice. Note that several of the solicitations for comment/data below have not been previously discussed elsewhere in this NODA.

1. Concentration-based limits. EPA proposed to set mass-based limitations and standards (*e.g.,* kg/1,000 kg live weight killed). Based, however, on comments received on the proposed rule, EPA is considering setting concentration-based limitations and standards in the final rule. EPA is considering such limitation rather than limiting facility flows, and, as a result, potentially hindering their ability to reduce pathogens that can cause foodborne illness. Use of concentration-based limitations would also obviate the need for facilities to report production data when applying for coverage under an NPDES permit and the necessity for the permit writer to establish a reasonable measure of long-term production that applies to a particular facility. EPA solicits comment on this issue. EPA is particularly interested in comments on whether adoption of such concentration limitations rather than mass-based limitations is appropriate in light of the Agency's expressed interest in conservation of water. EPA notes that it has already received and is evaluating comments on the proposed rule concerning increased water usage as a result of the implementation of USDA's Hazard Analysis and Critical Control Point (HACCP) systems final rule.

2. Combining of poultry subcategories. EPA is considering combining the proposed Poultry Slaughtering and Poultry Further Processing subcategories into one subcategory. EPA currently identified only one stand-alone poultry further processing facility. This facility is employing more advanced wastewater treatment technology than most facilities in the Poultry Slaughtering subcategory. EPA notes that in addition to using data from poultry slaughtering facilities, the limits for Subcategory K were developed using facilities that were treating further processing and rendering wastewater in addition to their slaughtering wastewater. Therefore, EPA believes that the data for Subcategory K may reasonably characterize the treatability of Subcategory L wastewater and is considering combining subcategories K and L into one subcategory for the final rule. EPA solicits comment on this approach.

3. Chemical or Biological Phosphorus Removal. EPA has based its cost module for phosphorus removal on the chemical removal of phosphorus using alum. However, there are facilities using biological phosphorus removal including one poultry facility which EPA is using to develop limitations. However, EPA has determined that it is unlikely that biological phosphorus removal (without the use of a chemical removal polishing step) would consistently achieve the target effluent concentrations that EPA is currently projecting for chemical phosphorus removal. EPA solicits comment and data on treatability of poultry or red meat wastewater using biological phosphorus removal as well as data on the associated costs. EPA also requests comment on developing limitations for the final rule based on performance of biological phosphorus removal, in order to provide greater compliance flexibility to facilities.

4. Filters and Storage Ponds. EPA received comment concerning the achievability of the proposed limits and the need for either filters or ''emergency'' storage ponds to consistently achieve the total suspended solids limits. EPA is considering whether costs for polishing filters or additional storage/diversion capacity may need to be included for one or more options or subcategories. EPA has received some information regarding the number of red meat facilities that may have ''emergency'' storage ponds. EPA is specifically considering whether or not to include costs for such a storage pond to receive wastewater prior to discharge when the TSS limits have not been achieved through an existing ''BAT'' or ''BPT'' treatment system. EPA intends to perform a sensitivity analysis to estimate additional costs for those sites that currently do not have this capacity. EPA is also considering adding costs for a polishing filter. EPA solicits comments and data on the performance of storage/diversion ponds and filters for polishing final effluent at red meat or poultry facilities and the associated costs.

5. BOD to TKN Ratio. EPA has worked with stakeholders during the development of the revised cost model discussed in Section III of today's notice. EPA is using a BOD to TKN ratio of 3 to 1 in designing the denitrification treatment. Stakeholders commented that this ratio is too low. EPA calculated this ratio from information in comments from industry, where EPA converted a COD to TKN ratio to a BOD to TKN ratio and then built in an additional safety margin. Specific details regarding this conversion can be found in the cost report, DCN 100782. To further investigate this issue, EPA is soliciting influent and effluent data from the direct discharge detail survey facilities

who are currently employing denitrification technology. This would enable EPA to calculate the actual BOD to TKN ratio for each subcategory for use in the final rule. EPA would specifically like monitoring data from the influent to the biological treatment system for BOD and TKN and information on the level of denitrification that is occurring in the system (*e.g.*, data on Total Nitrogen at the influent and effluent or nitrate+nitrite at the influent and effluent of the system).

6. Lagoon Bypass. As discussed in Section III, EPA has estimated costs for facilities to bypass some of the wastewater around the anaerobic lagoons if data indicated that the concentration of BOD leaving the anaerobic lagoon is not at least three times the concentration of TKN. Stakeholders reviewing EPA's cost model commented that EPA underestimated the costs for lagoon bypass. EPA's cost estimates were based on the lagoon bypass observed at one of the facilities EPA has sampled which may be less complex than the lagoon bypass discussed by commenters. EPA solicits comment on the capital and operating and maintenance costs associated with less complex and more complex systems used to bypass anaerobic lagoons.

7. Use of Methanol as Carbon Source. EPA includes costs, as necessary, for facilities to use methanol on weekends (when the plant is not in operation) as a carbon source for the biomass. Commenters are concerned that methanol would cause biomass upset if the biomass is not acclimated to it. EPA does not believe that the quantity of methanol that it estimates to be used over the weekends is sufficient to cause toxicity to the biomass. EPA solicits comment on the quantity of methanol found to be ''toxic'' to biological systems used to treat red meat and poultry processing wastewater.

8. EPA received a request from permitting authorities to clarify the distinction between animal feeding operations (AFOs)/CAFOs and animal holding areas in the MPP industry. Animal holding areas at MPP facilities where animals are held for short durations (one to several days) prior to slaughter are not considered AFOs, but rather are considered part of the MPP facility and any process wastewater from these areas is subject to MPP effluent guidelines. EPA solicits comment on an approach that would articulate these clarifying points in the regulatory text of the Meat and Poultry Products ELG. (*See* Section V.A for the relevant discussion.)

9. EPA is considering revising the existing and proposed limitations and standards for fecal coliforms to allow for results to be reported in either MPN units or CFU units per 100 ml. EPA solicits comment on this possible revision. (*See* Section V.C for the relevant discussion.)

10. Some facilities use ultraviolet (UV) technology to disinfect their wastewater before discharge instead of using chlorine or other chemical disinfectants. EPA intends to further review sampling episode data and to consider the self-monitoring data from facilities that use UV technology. EPA solicits comments and data on UV performance and costs for reducing fecal coliforms in MPP wastewaters. EPA also solicits comment on the extent to which water quality standards are driving the MPP industry to shift from chlorination/dechlorination to UV to achieve water quality standards for chlorine and chlorination byproducts and whether this shift necessitates a revised fecal coliforms limit that is consistently achievable with UV technology. (*See* Section V.C for the relevant discussion.)

11. EPA is considering using five forecasting methods when determining facility closures for the final rule. A facility would be projected to close if the present value (PV) of future compliance costs exceeds the forecast PV of net income under three of the five forecasting methods. Alternately, EPA might use some subset of the five forecasting methods. EPA solicits comment on the appropriate use of these forecasting methods for future facility income in the MPP industry. (*See* Section VI.A.1 for the relevant discussion.)

12. Because fewer than 40 percent of direct discharging facilities provided facility-level financial data in the detailed survey, EPA is considering a closure analysis at the company level in addition to the facility level. EPA solicits comment on the aggregation of facility-level compliance costs to the company level, and the use of a company-level closure analysis. In addition, EPA solicits comment on the methodology used to estimate compliance costs for the closure analysis for the 70 non-surveyed facilities which are owned by the same parent companies as the 55 detailed survey recipients. (*See* Section VI.A.3 for the relevant discussion.) EPA also solicits comment on appropriate methods for ''scaling-up'' the facility-level and company-level closure analyses to provide national projections given that there are sufficient data to analyze only a subset of facilities/companies.

13. To address commenters' concerns about the effect of the proposed rule on poultry exports, EPA derived its trade elasticities based on Armington's framework in which one country's meat products are an imperfect substitute for those of other countries. EPA solicits comment on its revised trade elasticity methodology. (*See* Section VI.B for the relevant discussion.)

14. Based on public comments received on the proposed rule, EPA is considering possible revisions to its approach for determining environmental benefits. For modeling water quality, EPA solicits comment on the use of the six-parameter Water Quality Index (instead of the four-parameter Index) to assess the environmental improvements from the MPP regulation. In particular, EPA solicits comment on the inclusion of nitrogen and phosphorous in the kinetics model. EPA also solicits comment on the use of NAWQA data to calibrate the baseline, and solicits other sources of data to use in the calibration effort. (*See* Section VII.A.1 for the relevant discussion.)

15. EPA is considering site-specific or watershed-specific models to evaluate the effects of nutrients and pollutants on receiving waterbodies from individual representative MPP facilities. EPA solicits comment on the applicability of the AQUATOX, QUAL2E and BASINS models to model the environmental benefits of the MPP regulation. (*See* Section VII.A.2 for the relevant discussion.)

16. EPA solicits comment on the use of Mitchell and Carson's valuation function for estimating the monetized benefit for the MPP industry. If more site-specific valuation information becomes available, EPA may decide to incorporate those site-specific values for estimating the monetized benefit. (*See* Section VII.B.1 for the relevant discussion.)

17. EPA solicits comment on its approach to estimating monetized benefits associated with reduced TSS concentrations at drinking water intakes. (*See* Section VII.D.1 for the relevant discussion.)

18. EPA solicits comment on the use of a regional vulnerability assessment for the MPP environmental assessment. (*See* Section VII.D.3 for the relevant discussion.)

19. EPA did not use data from two pre-proposal sampling episodes (6335 and 6446) in its analyses presented in today's notice. EPA solicits comment on the potential use of data from Episodes 6446 and 6335 for use in developing pollutant loading estimates and limitations and standards for the final

rule. (*See* Section VIII.A.2 for the relevant discussion.)

20. EPA is considering reducing the assumed monitoring frequency from daily to weekly for any new limitations and standards promulgated in this rulemaking. EPA incorporated a weekly monitoring frequency into the monitoring costs for this notice. EPA solicits comment on changing the monitoring frequency to weekly. (*See* Section VIII.B for the relevant discussion.)

21. EPA solicits comment on a no further regulation option for red meat processing facilities and a no regulation option for poultry processing facilities (*See* Section IX.B for the relevant discussion).

22. For developing the estimates of compliance costs and pollutant loadings presented in today's notice, EPA transferred the target effluent concentration for Total Nitrogen from well-operated facilities at the Option 2.5 level that slaughter poultry (Subcategory K) to red meat facilities in Subcategories A–D. EPA solicits comment on this data transfer from poultry to meat slaughtering for the final rule. (*See* Section V.D for the relevant discussion.)

23. When establishing the New Source Performance Standard (NSPS) level of control, EPA considers the potential barrier that compliance costs due to the effluent guidelines regulation pose to new facilities entering the industry. The barrier to entry analysis compares estimated average incremental facility or company capital costs incurred to meet the effluent guidelines to average total assets of existing facilities or companies. The ratio of average capital costs to average total assets is a proxy for potential barriers to entry due to the MPP rule. EPA solicits comment on other measures of ''barrier to entry'' that would be appropriate for this industry. (*See* Section X.D for relevant discussion.)

Dated: August 5, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

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Part IV

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Enhancement of Neighborhood Networks for Fiscal Year 2002 Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4866–N–01]

Notice of Funding Availability (NOFA) for the Enhancement of Neighborhood Networks for Fiscal Year 2002 Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* This NOFA announces the availability of $5 million in Fiscal Year (FY) 2002 funds to expand the Neighborhood Networks program for FY 2002 HOPE VI Revitalization Program grant awards.

Available Funds. A total of $5,000,000 is available for funding which must be obligated in FY 2003.

Eligible Applicants. Eligible applicants are PHAs that are awardees of HOPE VI Revitalization Grants, awarded under the Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002, as published in the **Federal Register** on July 31, 2002, page 49766 to 49791, Docket Number FR–4768-N–01 (HOPE VI NOFA).

Transfer of Funds. HUD does not have the discretion to transfer funds available through this NOFA to any other program, grant, or area of the applicant's current HOPE VI grant. The funds must be used for the expansion of Neighborhood Networks facilities and services beyond those described in the applicant's HOPE VI NOFA application.

Maximum Funding. Each applicant may request up to $180,000. If funds remain after all grants are awarded, HUD will divide these funds equally among the grant award recipients. This may result in grant amounts larger than $180,000. HUD reserves the right to award a greater or lesser amount of funds than requested, based upon the merit of the submitted grant application.

Deobligation of Funds. HUD may deobligate amounts for the grant if proposed activities are not initiated or completed within the required time after the effective date of the award. The grant agreement will set forth in detail circumstances under which funds may be deobligated and other sanctions imposed.

Number of Applications Permitted. Each applicant may submit only one application.

Joint Applications. Joint applications are not permitted. However, in accordance with Section XI (A)(4), Community and Supportive Services, of the HOPE VI NOFA, the applicant may enter into subgrant agreements with procured developers, other HOPE VI partners, non-profits, or state or local governments to perform the activities proposed under the application.

Grant term. The grant term for funding shall be equal to the term of the applicant's HOPE VI NOFA grant award, regardless of the date of award under this NOFA. Extensions of the grant term shall also be equal to extensions granted under the HOPE VI grant.

Relationship to HOPE VI NOFA. Applications must be in accordance with this HOPE VI Neighborhood Networks NOFA (hereafter referred to as NN NOFA) and the requirements of the HOPE VI NOFA, especially including Section XI (A), Community and Supportive Services. Where inconsistencies exist between the HOPE VI NOFA and this NN NOFA, this NN NOFA shall take precedence, *e.g.*, application due date and maximum pages differ for the NOFAs, rating factors differ for the NOFAs, narrative other than the response to the rating factors is not allowed in the NN NOFA. HUD will only use funds from this NN NOFA to fund grantees of the HOPE VI NOFA, as defined below.

Application Due Date. September 12, 2003.

NN NOFA grant applications are due at HUD Headquarters on or before 5:15 p.m, Eastern Time, 30 calendar days after publication of this NN NOFA in the **Federal Register**. This application deadline is firm. If you mail or give your application to an overnight carrier on the due date and it does not arrive by 5:15 p.m. on the due date, your application will not be considered. Submit your application early to avoid missing the deadline and being disqualified by unanticipated delays or other related problems.

SUPPLEMENTARY INFORMATION:

I. Application Submission, Application Kits, and Technical Assistance

A. *Address for Submitting Applications.* Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important to ensure that your application is not misdirected.

B. *Application Submission Requirements.* 1. It is strongly recommended that you send your application by an overnight carrier at least two days before the application due date. You may only use DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service (USPS), as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD's Headquarters business hours, between 8:45 a.m. and 5:15 p.m., Eastern Time, Monday through Friday. If these companies do not serve your area, you must submit your application via USPS.

2. Hand Carried Applications. Due to new security measures, HUD will no longer accept hand carried applications.

3. HUD will not accept for review and evaluation any applications sent by facsimile (fax). However, facsimile corrections to technical deficiencies will be accepted, as described in Section IX of this NOFA. Also, do not submit resumes or videos.

C. *Application Kits.* Application kits will not be used with this NOFA.

D. *Maximum Length of Application.* The maximum length of the rating factor response portion of the application is 20 pages, double-spaced on 8½ x 11 inch paper, with a minimum font size of Times New Roman 12 point. The 20 page maximum does not include forms required by the NN NOFA or supporting documentation, *e.g.*, commitment letters. Applicants should make every effort to submit only what is necessary in terms of supporting documentation. Points will not be added for overall length of the application.

E. *Application Format.* The only narrative portion of the application is the applicant's response to the rating factors. To ensure proper credit for information applicable to each rating factor, the applicant should include page-number references to the program summary, forms, and supporting documentation. More detail on the application format is located in Section VII of this NN NOFA. Applicants' rating factor responses should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions of this NN NOFA. This will help ensure a fair and accurate review of your application. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

F. *Technical Assistance.* 1. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing and/or speech challenges may access these telephone numbers via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

2. Frequently asked questions, clarifications, and any technical corrections will be posted to the HUD Web site at *http://www.hud.gov.* In addition, all materials related to this NN NOFA will be posted to the HOPE VI Web site at *http://www.hud.gov/hopevi.* Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these sites during the application preparation period.

II. Amount Allocated

A total of $5,000,000 is available for funding which must be obligated in FY 2003.

III. Program Description

A. The Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002, as published in the **Federal Register** on July 31, 2002, page 49766 to 49791, Docket Number FR–4768–N–01 (HOPE VI NOFA) stated that funding for Neighborhood Networks within the HOPE VI program would be offered under a separate Neighborhood Networks NOFA. This is that NOFA.

B. Grantees from the FY 2002 HOPE VI NOFA (defined below) are building Neighborhood Network Centers (NNCs) and/or developing Neighborhood Networks programs as part of their revitalization plan. HOPE VI monies can be used for NNC construction, computer and information technology hardware, staffing, and services.

C. The Neighborhood Networks enhancement grant will provide additional funding to HOPE VI grantees to accelerate and optimize the development of their NNCs as focal points for innovative information technology (IT) programs and supportive service delivery through digital technologies. This Neighborhood Networks NOFA (NN NOFA) provides grants to qualified Public Housing Agencies (PHAs) to (1) Update, maintain, and expand existing Neighborhood Networks/community technology centers (NNCs); or (2) establish new NNCs. Proposed grant activities must build on the foundation created or planned under the application for the HOPE VI NOFA.

D. NNCs provide computer and Internet access to public housing residents and offer a full range of supportive services. Applicants should submit proposals that will: provide job training; reduce welfare dependency; promote economic self-sufficiency; increase the use of computer technology; expand educational opportunities for residents; develop access to health and nutrition information; and meet other needs of residents. A NNC may be existing or new.

1. An existing NNC is:

a. A computer lab, or community technology center already owned and operated by a PHA or nonprofit which serves residents of public housing and which has not received prior Neighborhood Networks funding and therefore is not officially designated a HUD Public and Indian Housing (PIH) NNC; or,

b. A computer lab officially designated a HUD PIH NNC by virtue of PIH funding received prior to award of HOPE VI NOFA funds.

2. A new NNC is one that:

a. is not operational;

b. is in development; and/or,

c. needs funding under this grant program to become fully operational and serve residents of public housing.

E. HUD is looking for applications that implement comprehensive programs within the grant term that will result in improved economic self-sufficiency for public housing residents. HUD is looking for proposals that involve partnerships with organizations that will help supplement and enhance the services grantees will offer to residents.

F. If you are interested in applying for funding under this NN NOFA, please carefully review the application requirements provided below.

IV. Program Requirements

A. *Eligible Activities.* 1. Programs offered by NNCs shall be designed to meet public housing residents' needs, be geared towards helping residents transition from welfare to work, assist school-age children and youth with homework, provide guidance and preparatory programming to high school students (or other interested residents) for post-secondary education (college or trade schools), offer life-skills and job training for youth, adults, and seniors, and provide health care information and other services as deemed necessary by results obtained from resident surveys. NNCs must be located within the HOPE VI development's locally defined neighborhood, on PHA owned land (including land leased to an ownership entity via a ground-lease) or land leased by the PHA, procured developer, or owner entity on a long-term lease of at least 15 years.

2. Applicants should provide the following staff and services:

a. Increased computer and Internet access for residents during all phases of the HOPE VI revitalization process, including those that are temporarily or permanently relocated through a Housing Choice Voucher (HCV). Innovative approaches that promote computer ownership or home-based computer access in conjunction with NNC access will receive higher scores;

b. Use the NNC as a focus for computer and online access to community and supportive services, whether those services are computer/Internet related or not. An emphasis on access during the relocation process will receive higher scores;

c. The creation of online groups whose purpose is to better connect residents to each other and the HOPE VI revitalization process;

d. NNCs will use computers, software, and Internet connectivity and should provide the following array of supportive services:

i. Hiring of a qualified Neighborhood Networks Coordinator to run the grant program. A qualified Neighborhood Networks Coordinator should have two years of experience running a community technology center. The Neighborhood Networks Coordinator should be hired for the entire term of your grant.

ii. The Neighborhood Networks Coordinator should be responsible for ensuring that the NNC's programs achieve your application's goals and objectives.

iii. In addition, the Neighborhood Networks Coordinator should be responsible for the following activities:

(A) Marketing the program to residents;

(B) Assessing participating residents' needs, interests, skills, and job-readiness;

(C) Assessing participating residents' needs for supportive services, *e.g.* childcare;

(D) Designing and coordinating grant activities based on residents' needs;

(E) Monitoring the progress of program participants and evaluating the overall success of the program. A portion of grant funds should be reserved to ensure that evaluations can be completed for all participants who received training through this program. For more information on how to measure performance, please *see* Rating Factor 5.

(F) Coordinating the type of Neighborhood Networks training provided to each participant with other available Community and Supportive Services (CSS) programs in an effort to ensure proper instructional level. Other CSS services should include, but are not limited to:

(1) Life skills training: how to apply for a job; credit worthiness; opening a bank account; balancing a checkbook; creating a weekly spending budget; and contingency planning for child care and transportation;

(2) Real Life Issues: tax forms; voter registration; lease samples; fair housing; car insurance; health insurance; and long-term care insurance;

(3) Literacy training and GED preparation;

(4) Computer training, from basic to advanced;

(5) College preparatory courses and information;

(6) Goal setting: working with residents to define their professional, educational, and economic goals;

(7) Mentoring;

(8) Job Training: oral and written communication skills; work ethic; interpersonal and teamwork skills; resume writing; interviewing techniques; creating job training; and placement programs with local employers and placement agencies; and post-employment follow-up to assist residents who are new to the workplace; and

(9) Supportive Services such as transportation, healthcare information and services including referrals to mental health providers, alcohol and other drug abuse treatment programs, childcare, parenting courses, and other services needed by residents.

3. Applicants may provide the following physical improvements:

a. Physical improvements must directly relate to providing space for NNC activities. Renovation, conversion, wiring, and repair costs may be essential parts of physical improvements. In addition, architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections may also be part of the cost components to implement physical improvements;

b. Modifications to create a space that is accessible to persons with disabilities is an eligible use of funds. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for state, local and Indian tribal governments. All renovations must meet appropriate accessibility requirements, including Section 504 requirements at 24 CFR 8, Architectural Barriers Act at 24 CFR 40, and the Americans with Disabilities Act. Compliance with the Uniform Federal Accessibility Standards shall be deemed to comply with the requirements of 24 CFR 8.21 with respect to buildings.

i. The renovation, conversion, or joining of vacant dwelling units in a PHA development to create appropriate space for the equipment needs and activities of a NNC (computers, printers, and office space) are eligible activities for physical improvement.

ii. The renovation or conversion of existing common areas in a PHA development to accommodate a NNC is eligible.

iii. If renovation, conversion, or repair is done off-site, the applicant must provide documentation that its procured developer or owner entity has control of the proposed property for at least 15 years. Control can be demonstrated through a lease agreement, ownership documentation, or other appropriate documentation.

4. Maintenance and insurance costs. This includes installing, training, and maintaining the hardware and software as well as insurance coverage for the space and equipment. Costs of computer hardware and software necessary to accommodate the needs of persons with disabilities are an eligible cost for this funding category.

5. Purchase of computers, printers, software, and other peripheral equipment.

6. Security and related costs. This includes space and minor refitting, locks, and other equipment for safeguarding the center.

7. Resident development and training courses. These courses may be taught through educational software and/or presented live. Programs should be designed to address job training, life-skills, educational needs of residents (youth and adults), and other interests/needs of residents as determined by an assessment of residents conducted by the applicant.

8. Distance Learning Equipment. Distance learning equipment (including the costs for video casting and purchase/lease/rental of distance learning equipment) is an eligible use of funds provided your proposal indicates that the center will be working in a virtual setting with a college, university, or other educational organization. If you operate more than one center, distance-learning equipment can be used to link one or more centers so that residents using the different centers can benefit from courses being offered at only one site.

9. Administrative costs. Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, salaries for resident employees hired as part of this grant program, quality assurance, local travel, and utilities. Administrative costs must adhere to OMB Circular A–87. Please use Grant Application Detailed Budget Worksheet, HUD–424–CBW, to itemize your administrative costs.

10. The grantee may not charge public housing and/or HOPE VI development residents and FSS participants for Neighborhood Networks services rendered. However, after one year from the date of grant agreement execution, the NNC may charge other organizations or individuals for services rendered, provided that: (1) The grantee forms an IRS approved nonprofit to run the NNC; and (2) timing of and amount of charged services do not interfere with the amount or scheduling of services to public housing/HOPE VI development residents.

B. *Ineligible Activities.* 1. Payment of wages and/or salaries to participants receiving supportive services and/or training programs;

2. Purchase or rental of land;

3. Purchase or rental of vehicles;

4. Cost of application preparation;

5. Charging for services to public housing/HOPE VI development residents and FSS participants; and

6. Incurring other costs that are not allowable under the HOPE VI NOFA grant award and are not stated as allowable under this NN NOFA.

C. *Threshold Requirements.* Match. HUD is required by the Quality Housing and Work Responsibility Act (Sec. 24(c)(1)(A), 42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI related grants. All applicants are required to have in place a 5 percent match in cash or in-kind donations. The match is a threshold requirement. Applicants who do not demonstrate the minimum 5 percent match will fail the threshold requirement and will not receive further consideration for funding. The match may include any funds or in-kind services that were included in the HOPE VI NOFA application, provided that such funds/services comply with the match requirements stated in this section. Match donations must be firmly

committed. ''Firmly committed'' means that the amount of match resources and their dedication to Neighborhood Networks activities must be explicit, in writing, and signed by a person authorized to make the commitment. Letters of commitment or Memoranda of Understanding (MOU) must be on organization letterhead and signed by a person authorized to make the stated commitment whether it be in cash or in-kind services. The letters of commitment/MOUs must indicate the annual level and/or amount of commitment in dollars and indicate how the commitment will relate to the proposed program. The commitment must be in place at the time of award. The applicant may propose to use its own, non-public housing grant funds, *e.g.*, Community Development Block Grant (CDBG), to meet the match requirement. You must accompany this letter with documentation on how the match relates to your Neighborhood Networks program. Applicant staff time is not an eligible cash or in-kind match. Applicants shall annotate the HUD–424–CB, Grant Application Detailed Budget, listing the sources and amount of each match. If the commitment letter/MOU for any match funds/in-kind services is not included in the application and provided before the NOFA due date, the related match will not be considered. This is not a technical deficiency and cannot be corrected during the corrections period.

D. *Eligible Participants.* More than 50 percent of program participants must be residents of public housing.

E. *Resident Assessment.* Applicants are required to assess residents' needs and interests so that program activities are designed to address their needs. This information may be limited to the requirements in the program summary.

F. *Sustainability.* Applicants shall submit a program summary with their application, required under Rating Factor 3, which shall indicate the level and type of expenditures over the grant term, contributions from partners, and efforts applicants will make to ensure the NNC will be sustainable once the grant term expires.

G. *Partnering.* Applicants should partner with local businesses, schools, libraries, banks, employment agencies, or other organizations, which will help applicants, deliver supportive services, and fulfill residents' needs. These organizations can provide additional expertise, volunteers, office supplies, training materials, software, equipment, and other resources.

H. *Periodic Reporting:* Grantees will be required to submit Neighborhood Networks information in the CSS portion of the HOPE VI Quarterly Progress Report. HUD will furnish information requirements to the grantees upon assignment of an OMB Paperwork Reduction Act number to the information collection.

I. *Final Report.* The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its program summary and HOPE VI CSS Plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances. The final narrative and financial report shall be due to HUD 90 days after the full expenditure of funds or when the Neighborhood Networks program activities are complete.

J. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR 84 or 24 CFR 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

V. Definition of Terms

Community and Supportive Services are services that are described in Section XI of the HOPE VI NOFA.

Neighborhood Networks Centers (NNCs) are community centers or rooms where computer and network hardware and software are set up and training in a wide array of digital-related services is provided.

HOPE VI NOFA means the Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002, as published in the **Federal Register** on July 31, 2002, page 49766 to 49791, Docket Number FR–4768–N–01.

Match. Means at least 5 percent of the grant amount is required as the grant match. See details in Section IV(C) of this NN NOFA.

Neighborhood Networks Coordinator (NNC Coordinator) is a person who is responsible for coordinating the activities proposed for this NN NOFA to ensure that their implementation will achieve the overall grant goals and objectives.

Nonprofit organization is an organization that is exempt from federal taxation. A nonprofit can be organized for the following purposes: charitable, religious, educational, scientific, and literary and others. In order to qualify, an organization must be a corporation, community chest, fund, or foundation. An individual or partnership will not qualify. To obtain nonprofit status, qualified organizations must file an application with the Internal Revenue Service (IRS) and receive designation as such by the IRS. For more information, go to *http://www.irs.gov.* Proposed subgrantees that are in the process of applying for nonprofit status, but have not yet received nonprofit designation from the IRS on the application due date, will not be considered nonprofit organizations.

Owner entity is the legal entity that holds title to real property that contains public housing units.

Person with disabilities means a person who:

1. Has a condition defined as a disability in section 223 of the Social Security Act;

2. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

3. Is determined to have a physical, mental, or emotional impairment which:

a. Is expected to be of long-continued and indefinite duration;

b. Substantially impedes his or her ability to live independently; and

c. Is of such a nature that such ability could be improved by more suitable housing conditions.

4. The term ''person with disabilities'' may include persons who have acquired immunodeficiency syndrome (HIV/AIDS) or any conditions arising from the etiologic agent for AIDS. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

5. The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

Procured developer is a legal entity that has a contract or ''Developer Agreement'' with a Public Housing Agency (PHA) to finance, rehabilitate and/or construct housing units, and, sometimes, to provide community and supportive services for a HOPE VI grantee.

Project is the same as ''low-income housing project'' as defined in section 3(b)(1) of the United States Housing Act

of 1937 (42 U.S.C. 1437 *et. seq.*) (1937 Act).

VI. Selection Process

A. *Application Selection Process.* Three levels of review will be conducted: (1) A screening to determine if you are eligible to apply for this funding category and whether your application submission is complete, on time, and meets threshold; (2) a technical review by an individual reviewer to rate your application based on the five rating factors provided in this section; and (3) a technical review by a review committee to ensure uniform rating treatment by the individual reviewers. HUD will select for grant award the highest ranked application first and continue down in ranking until funds are exhausted.

B. Response to Factors as Narrative. As explained in Section I.E., Application Format your responses to the rating factors constitute the narrative portion of the application. The rating factor responses should include information and references to the program summary that is required under Rating Factor 3 and other documentation in the application. The factors cover key personnel, target audience, services and activities, how the services/activities match the needs of the target audience, program evaluation, and financial controls. A narrative separate from the rating factor responses will not be reviewed. Repeating information is not necessary.

C. *Factors for Award Used to Evaluate and Rate Neighborhood Networks Applications.* The factors for rating and ranking applicants and maximum points for each factor are provided below. The maximum number of points available for this program is 50. In order to be awarded a grant under this NN NOFA, the applicant must score a minimum of 35 points. (Two extra EZ/EC bonus points were already included in the award of the HOPE VI NOFA and will not be included in this NN NOFA).

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (12 Points)

A. *Description.* This factor addresses whether the applicant has the organizational resources necessary to successfully implement the proposed activities within the grant period. In rating this factor, HUD will consider the extent to which the proposal demonstrates that the applicant will have qualified and experienced staff dedicated to administering the program.

B. *Proposed Program Staffing. Staff Experience* (4 Points).

1. The knowledge and experience of your proposed NNC Coordinator, staff, subcontractors, subgrantees, and other partners in planning and successfully managing programs similar to the Neighborhood Networks program for which funding is being requested. Experience will be judged in terms of recent, relevant, and successful experience of your team to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent; experience should relate specific activities and specific accomplishments.

2. *Scoring:* a. If your proposed team has experience working in both computer-related and supportive service programs, you may receive up to 4 points.

b. If your team has experience in only one area, you may receive up to a maximum of 2 points for this subfactor.

c. If your staff has experience in neither area, you will receive a score of 0 points for this subfactor.

C. *Staff Capacity* (4 Points). 1. You will be evaluated based on whether you, your subcontractors, and partners have sufficient personnel, or will be able to quickly access enough qualified experts or professionals, to deliver the proposed activities in a timely and effective fashion.

2. Scoring:

a. If you have staff and partners in place to begin the proposed work immediately, you will receive up to a maximum of 4 points;

b. If you have staff and partners in place to begin the proposed work three months after award, you will receive up to a maximum of 2 points;

c. If you have staff and partners in place to begin the proposed work six months after award, you will receive up to a maximum of 1 point; and

d. If you will not have the staff and partners in place within six months, you will receive 0 points.

D. *Program Administration and Fiscal Management.* (4 Points). 1. Describe how you will manage the program; how HUD can be sure that there is program and financial accountability; and describe staff/team members' roles and responsibilities. You must provide the following:

a. A *complete* description of your fiscal management structure, including fiscal controls you have in place;

b. A list of any findings (HUD Inspector General, management review, fiscal, etc.), material weaknesses and what you have done to address them.

2. Scoring:

a. If you show fiscal management controls that are adequate to manage a grant from this NN NOFA, and you do not have any outstanding findings, you will receive up to 4 points;

b. If you show a program management structure and fiscal management controls that are adequate to manage a grant from this NN NOFA, but have outstanding findings (or do not address findings), you will receive up to 2 points; and

c. If you do not describe your program management structure and fiscal management controls and show that they are adequate, you will receive 0 points.

Rating Factor 2: Need/Extent of the Problem (8 Points)

A. *Description.* 1. This factor addresses the extent to which there is a need for funding your proposed program and your indication of the importance of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you describe and document the level of need for your proposed activities and the urgency in meeting the need.

2. Contrast the number of low-income residents in the area around the existing or proposed NNC to availability of no-cost Neighborhood Networks type training currently in that area. State the sources of this information. You should document needs as they apply to the HOPE VI development's locally defined neighborhood.

3. In responding to this factor, you should include:

a. Public Housing Residents and Low-Income Families. The applicant should reference relevant pages in the program summary.

b. Local Training Program Information. Information on the lack of Neighborhood Networks related training programs currently available and easily accessible to public housing residents. List no-cost training that is available through either the PHA or other local or state community organizations.

B. *Scoring:* 1. If there are no computer and Internet facilities available in the HOPE VI development's locally defined neighborhood other than those located at public schools, you may receive up to 8 points;

2. If there is an insufficient amount of computer and Internet facilities available in the HOPE VI development's locally defined neighborhood, including library and public school availability, you may receive up to 4 points, depending upon the number of residents in need; and

3. If there are sufficient computer and Internet facilities available in the HOPE VI development's locally defined neighborhood to fulfill the needs of your

Public Housing residents, you will receive 0 points.

Rating Factor 3: Soundness of Approach (15 Points)

A. *Description.* 1. This factor addresses both the quality and cost-effectiveness of your proposed program summary. Your factor response, including your program summary, must indicate a clear relationship between your proposed activities, the targeted population's needs, and the purpose of the program funding. Your program summary should include, at a minimum, the following:

a. A description of the NNC(s) including the current or planned name and address of the NNC(s) and the name and phone number of the current or planned NNC managers (if there is only one NNC, the name of the NNC Coordinator);

b. The focus of each NNC, *i.e.*, whether services will include:

i. Job skills training/employment;

ii. Introduction to/familiarization with computers;

iii. Internet access and access to local services;

iv. Basic adult education, literacy, ESL, GED;

v. Youth education;

vi. Senior services;

vii. Continuing education; and,

viii. Recreation.

c. PHA demographics, including:

i. Total number of conventional family public housing units;

ii. Total number of residents;

iii. Number of adults 21–61 years old;

iv. Number of adults 62 and older;

v. Number of children 0–6 years old;

vi. Number of children 7–13 years old;

vii. Number of children 14–17 years old;

viii. Number of young adults 18–20 years old;

ix. Number with ESL (English as Second Language) needs;

x. Percentage of single parent households; and

xi. Percent that are public assistance recipients.

d. Your objectives, including:

i. The number of participants you will provide with access to technology and the Internet per year, broken out by age of the resident, on a yearly basis;

ii. The number of participants you will provide with an opportunity to be involved in the planning, implementation, and daily maintenance of the NNC on a yearly basis;

iii. The number of adult resident participants per year to which you will expand community based job training;

iv. The number of participants per year whose training will prepare them for opportunities to telecommute;

v. The number of participants per year to which you will teach Basic Skills and Increase Adult Education Level, including literacy, ESL, GED courses;

vi. The number of school aged children per year for which you will improve academic achievement to the appropriate grade level each year by attempting to raise and maintain the educational level on standardized tests;

vii. The number of useful ongoing linkages to local community groups that you will create each year. Include the names and functions of the groups. You may combine this list with your list of leveraged in-kind services and funds in Rating Factor 4, provided a reference is made thereto; and

viii. The number of years it will take to create a self-sustaining NNC. Include evidence of financial planning to produce this result.

e. Milestones for setting up or expanding the NNC(s), including:

i. Construction start and finish;

ii. Equipment procurement start and finish;

iii. Staffing completion; and

iv. Beginning date of classes and training.

f. List and cost of hardware to be procured, including hardware that is accessible to persons with disabilities;

g. The types and amounts of staff to be hired, *e.g.,* the cost and number of hours for the Neighborhood Networks Coordinator, other paid staff (with their titles), volunteer staff, leverage staff; and

h. Schedule for the Center, including days/hours open, classes, and open lab/free time on the computers.

In rating this factor HUD will consider:

B. *Specific Services and/or Activities* (12 points). 1. *Description.* Your rating factor response and program summary must describe the specific services and activities you plan to offer, who will benefit from them and how they will benefit from them. Refer to the program summary and tie specific services/activities to specific sub-groups, including persons with disabilities, within your public housing resident and low-income communities. Your rating factor response must indicate the types of activities and training programs you will offer which can help residents successfully transition from welfare to work and/or earn higher wages.

2. *Scoring:* a. If you show a variety of courses that fulfill the needs of your public housing residents and participant subgroups in the following areas, you will receive up to 12 points.

i. Computer and Internet knowledge as it relates to obtaining Community and Supportive Services;

ii. Teaching participants how to improve their job hunting and employment skills, including obtaining specific, generally accepted training certifications; and

iii. Providing training courses that build upon one another with the goal of teaching your public housing residents to independently use computers and the Internet to provide themselves with community, supportive, and self-sufficiency services.

b. If you show a variety of courses that fulfill the needs of your public housing residents and participant subgroups in the following areas, you will receive up to 8 points.

i. Teaching participants how to improve their job hunting and employment skills, including obtaining specific, generally accepted training certifications; and

ii. Providing training courses that build upon one another with the goal of teaching your public housing residents to independently use computers and the Internet to provide themselves with community, supportive, and self-sufficiency services.

c. If you show a variety of courses that fulfill the needs of your public housing residents and participant subgroups in the following areas, you will receive up to 4 points.

i. Teaching participants how to improve their job hunting and employment skills, including obtaining specific, generally accepted training certifications.

ii. General computer and Internet knowledge as it relates to obtaining Community and Supportive Services.

d. If you do not show that the courses you offer fulfill the needs of your public housing residents, you will receive 0 points.

C. *Feasibility* (3 points). 1. *Description.* This factor examines whether your overall application is logical, feasible, and likely to achieve its stated purpose during the term of the grant. You will be evaluated based on whether your application shows that you can communicate well with your public housing residents regarding computers and the Internet, whether you are using a logical approach in planning and implementing the program and whether the amount of funds requested is commensurate with the level of effort necessary to accomplish your goals and anticipated results.

2. *Scoring:* a. If your application shows financial feasibility, the ability to work with the target group of residents and low-income families, a logical plan

to provide training courses, and that the amount of requested funds is commensurate with the level of effort necessary to accomplish your goals and anticipated results, you will receive up to 3 points.

b. If your application shows financial feasibility and the ability to work with the target group of residents and low-income families, you will receive up to 2 points.

c. If your application shows only financial feasibility, you will receive up to 1 point.

d. If your application as a whole is not logical and shows poor planning, you will receive 0 points.

Rating Factor 4: Leveraging Resources (10 Points)

A. *Description.* This factor addresses your ability to secure community resources that can be combined with HUD's grant resources to achieve program purposes. In rating this factor, HUD will look at the extent to which you partner, coordinate, and leverage your services with other organizations serving the same or similar populations.

B. *Leverage Description and Requirements.* 1. Leverage may be cash or other resources/services that can be donated and may include: in-kind services, contributions, or administrative costs provided to the applicant; funds from federal sources (not including public housing/HOPE VI funds) as allowed by statute, including for example CDBG; funds from any state or local government sources; and funds from private contributions.

2. Leverage funds and in-kind services (''donations'') must be firmly committed. ''Firmly committed'' means that the amount of leverage resources and their dedication to Neighborhood Networks activities must be explicit, in writing, and signed by a person authorized to make the commitment. Letters of commitment or Memoranda of Understanding (MOU) must be on organization letterhead and signed by a person authorized to make the stated commitment whether it be in cash or in-kind services. The letters of commitment/MOUs must indicate the annual level and/or amount of commitment in dollars and indicate how the commitment will relate to the proposed Neighborhood Networks program.

3. Commitment documents must be submitted to HUD with the NN NOFA application. If a commitment document is not included in the application, the donation will not be counted toward this factor. Missing commitment documents are not considered ''technical deficiencies'' and cannot be submitted after the due date.

4. Donations that were included in your HOPE VI NOFA application that specifically apply to the Neighborhood Networks program described in your HOPE VI NOFA may also be included in your NN NOFA application. However, in order to be counted toward this rating factor, the related commitment document must fulfill the ''firmly committed'' requirements stated above.

5. Public housing funds of any kind are not an eligible donation. Applicant staff time is not an eligible donation. Applicants shall annotate the HUD–424–CB to list the sources and amount of each donation.

6. Points for this factor will be awarded based on the documented evidence of partnerships and firm commitments and the ratio of requested funding to the total proposed grant budget.

7. Matching funds will be counted toward your leverage amount.

C. *Points will be assigned based on the following scale:*

Leverage as percent of grant amount	Points awarded
Up to 50 percent	5 points
50 percent or more	10 points

Rating Factor 5: Achieving Results and Evaluation Methods (5 Points)

A. *Description.* 1. Under this rating factor, applicants must demonstrate how they propose to measure their success and outcomes. This rating factor requires that the applicant identify goals, interim and final program outcomes, and their time frames. Examples of outcomes are: increasing the homeownership rates among participants, increasing participants' financial stability (*e.g.,* increasing assets of a household through savings), or increasing employment stability (*e.g.*, whether persons assisted obtain or retain employment for one or two years during participation).

2. Performance indicators should be objectively quantifiable and measure actual achievements against anticipated achievements. Your narrative should identify what you are going to measure, how you are going to measure it, and the steps you have in place to adjust your plans if outcomes are not met within established time frames.

B. *Scoring:*

1. If you show interim and final measurable outcomes, with time frames, for each of several participant sub-groups, and show plans for adjusting your program, you will receive up to 5 points.

2. If you show interim and final measurable outcomes, with time frames, but without plans for adjusting your program, you will receive up to 2 points.

3. If you do not show periodic and final measurable outcomes, with time frames, you will receive 0 points.

VII. Additional Requirements

A. *Compliance with Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include, but are not limited to a:

1. Voluntary compliance agreement signed by all parties in response to the letter of findings;

2. HUD-approved conciliation agreement signed by all parties; or

3. Consent order or consent decree.

B. *Additional Nondiscrimination Requirements.* You, the applicant, and your subrecipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

C. *Conducting Business in Accordance with Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state and local governments or government agencies or instrumentalities who receive federal

awards of financial assistance) are required to develop and maintain a written code of conduct (see sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award of funds from HUD.

D. *Ensuring the Participation of Disadvantaged Firms.* The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

1. Placing disadvantaged firms on solicitation lists;

2. Assuring that disadvantaged firms are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in sections (a) through (e) above.

E. *Increasing the Participation of Faith-Based and other Community-Based Organizations in HUD Program Implementation.* HUD believes that grassroots organizations; *e.g.*, civic organizations, congregations, and other community-based and faith-based organizations, have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services. HUD encourages applicants to include grassroots, faith-based, and other community-based organizations in contracting activities generated by HUD grant funds.

F. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* You must comply with Section 3 of the Housing and Urban Development Act of 1968 (''Section 3'') 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects); and the HUD regulations at 24 CFR part 135, including the reporting requirements at subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment, and other economic opportunities will be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low- and very low-income persons.

G. *Accessible Technology.* The Rehabilitation Act Amendments of 1998 (the Act) apply to all electronic information technology (EIT) used by a recipient for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal funds awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word-processing, e-mail, and Web pages), facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, funding recipients must ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, a recipient may provide an alternative means to allow the individual to use the information and data. However, no recipient will be required to provide information services to a person with disabilities at any location other than the location at which the information services is generally provided.

VIII. Application Content and Format

A. *Application Format.* 1. The only narrative portion of the application is the applicant's response to the rating factors, including the program summary. To ensure proper credit for information applicable to each rating factor, the applicant should include page-number references to the program summary, forms, and supporting documentation.

2. The applicant's rating factor response should be as descriptive as possible, ensuring that every requested item is addressed. Applicants should make sure to include all requested information, according to the instructions of this NN NOFA. This will help ensure a fair and accurate review of your application. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

3. The Grant Application Detailed Budget (HUD–424-CB) contains information that will add to your application. To assist you in filling out the form, HUD has available for your voluntary use a Grant Application Detailed Budget Worksheet (HUD–424-CBW) and Grant Application Detailed Budget Worksheet Instructions (HUD–424-CBWI). They can be downloaded from HUD's Internet forms service, *http://www.hudclips.org.*

4. The application is to be set up as follows:

TAB 1: Response for Rating Factor 1:
- Narrative
- Document References

TAB 2: Response for Rating Factor 2:
- Narrative
- Document References

TAB 3: Response for Rating Factor 3:
- Narrative
- Program Summary and Document References

TAB 4: Response for Rating Factor 4:
- Document References

TAB 5: Response for Rating Factor 5:
- Narrative
- Document References

TAB 6: Leverage Commitment Documents:
- Letters/MOUs from Partners attesting to leverage donations

TAB 7: Forms Required by this NN NOFA:
- See Applicant Checklist for required forms

5. Package the application as securely and simply as possible.

6. Two-hole punch the pages at the top with a 2¾″ center. Do not use a three ring binder.

IX. Corrections to Deficient Applications

A. After the application due date, HUD may not, consistent with its regulations at 24 CFR part 4, subpart B, consider any unsolicited information, you the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to the rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications, or failure to submit an application that contains a signature by an authorized official. Except on the Application for Federal Assistance (HUD–424), which requires an original signature, photocopied signatures are acceptable. In each case, HUD will notify you in writing of a technical deficiency. HUD will notify applicants by facsimile and will make a follow-up phone call to the PHA contact listed on the Acknowledgment of Application Receipt (HUD–2993). Through this phone call, HUD will ensure that appropriate PHA staff is made aware of the facsimile notice. It is very important that the fax number listed on the Application Receipt is correct so that it gets to the right person on your staff. Clarifications or corrections of technical deficiencies in accordance with the information requested by HUD must be submitted within 48 hours of the date and time you receive HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) The determination of when you received the notice of deficiency will be based on the confirmation of the facsimile transmission. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

B. *Unacceptable Applications.* After the 48 hour technical deficiency correction period, HUD will disapprove all applications that it determines are not acceptable for processing. HUD's notification of rejection will state the basis for the decision.

X. Findings and Certifications

A. *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3510), and the assigned OMB control number is 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

B. *Environmental Impact.* 1. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

2. *Environmental Review.* a. If an environmental review of the site has not been conducted, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by this Neighborhood Networks NOFA. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

b. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

c. You may not undertake any actions with respect to the project, that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds (RROF) following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

3. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (*see* 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

4. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

C. *Catalog of Federal Domestic Assistance Numbers.* The Federal Domestic Assistance number for this program is 14.866.

D. *Federalism Impact.* Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and

permitted by law, an agency from promulgating a regulation that has Federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have Federalism implications, and they will not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

E. *Accountability in the Provision of HUD Assistance.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

1. *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

2. *Disclosures.* HUD will make available for public inspection all applications and related documentation, including letters of support, for 5 years beginning not less than 30 days following the award or allocation. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

3. *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the above mentioned **Federal Register** notice, and for not longer than 120 days after awards for assistance are announced, HUD will provide a debriefing to any applicant requesting a debriefing on their application. All requests for debriefings must be made in writing and submitted to the Grants Management Center at the address indicated in Section I of this NOFA under the paragraph entitled ''Address for Submitting Applications.''

F. *Section 103 HUD Reform Act.* HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) Persons with hearing or speech challenges may access this telephone number via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339. For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

G. *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of non-appropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65), approved December 19, 1995, which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

H. *Lead-Based Paint.* You must comply with lead-based paint testing and abatement requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for testing and abatement activities. The National Lead Information Hotline is 1–800–424–5323.

I. *Labor Standards.*

1. Revitalization Grant Labor Standards.

a. Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are ''prevailing'' minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than nonroutine maintenance of a public housing project must be paid, as set forth in a wage determination that must be obtained by the PHA prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract.

b. HUD-determined wage rates apply to:

i. Operation (including nonroutine maintenance) of revitalized housing; and

ii. Demolition followed only by filling in the site and establishing a lawn.

2. Exclusions. Under Section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

a. Perform services for which they volunteered;

b. Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

c. Are not otherwise employed in the work involved (24 CFR part 70).

3. If other federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

J. *Executive Order 13202, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal and Federally Funded Construction Contracts.* Compliance with HUD regulations at 24 CFR 5.108 implementing Executive Order 13202 is a condition of receipt of assistance under this NOFA.

K. *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of the state, including PHAs, that are using assistance under this NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XI. Authority

The funding authority for Neighborhood Networks for grantees which were awarded Fiscal Year 2002 HOPE VI Revitalization grants is provided by the Fiscal Year 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Pub. L 107–73, approved on November 26, 2001) (FY 2002 HUD Appropriations Act) under Section 24(d)(1)(G).

The program authority for the HOPE VI Program is section 24 of the 1937 Act (42 U.S.C. 1437v), as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998).

Date: August 5, 2003.

Paula O. Blunt,

General Deputy, Assistant Secretary for Public and Indian Housing.

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HOPE VI NEIGHBORHOOD NETWORKS APPLICATION CHECKLIST

PHA Name: _____

Development Name: _____

I. HUD forms (numbered below) can be obtained of the Internet at

II. **http://www.hud.gov/grants/index.cfm**

III.	PHA CHECKOFF	HUD VERIFICATION
_____	Acknowledgment of Application Receipt (HUD-2993);	_____
_____	Application for Federal Assistance (HUD-424)	_____
_____	Applicant Assurances and Certifications (HUD-424B)	_____
_____	Budget Summary for Competitive Grant Programs (HUD-424C);	_____
_____	Grant Application Detailed Budget (HUD-424-CB);	_____
_____	Grant Application Detailed Budget Worksheet (HUD-424-CBW);	_____
_____	Applicant/Recipient Disclosure/Update Report (HUD-2880);	_____
_____	Disclosure of Lobbying Activities (HUD-SF-LLL) – if applicable	_____
_____	Narrative Responses to Rating Factors	_____

[FR Doc. 03–20673 Filed 8–12–03; 8:45 am]
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Federal Register

Vol. 68, No. 156

Wednesday, August 13, 2003

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FEDERAL REGISTER PAGES AND DATE, AUGUST

45157–45740 1
45741–46072 4
46073–46432 5
46433–46918 6
46919–47200 7
47201–47440 8
47441–47834 11
47835–48248 12
48249–48528 13

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12722 (See: Notice of July 31, 2003) 45739
12724 (See: Notice of July 31, 2003) 45739
13290 (See: Notice of July 31, 2003) 45739
13313 46073
13314 48249
13222 (See: Notice of August 7, 2003) 47833
Administrative Orders:
Notices:
Notice of July 31, 2003) 45739
Notice of August 7, 2003 47833
Presidential Determinations:
No. 2003–28 47441
No. 2003–29 47443

5 CFR

Proposed Rules:
532 47877

7 CFR

51 46433
250 46434
340 46434
916 48251
917 48251
993 46436
996 46919
1778 46077
1794 45157
Proposed Rules:
52 46504
91 48322
96 48322
331 45787
783 47499
983 45990
1124 46505
1131 46505
1778 46119
4279 46509

8 CFR

204 46925
212 46926
214 46926
231 46926
233 46926

9 CFR

77 47201
82 45741
94 47835
206 47802

10 CFR

140 46929
Proposed Rules:
30 45172
170 46439
171 46439

11 CFR

104 47386
107 47386
110 47386
9001 47386
9003 47386
9004 47386
9008 47386
9031 47386
9032 47386
9033 47386
9034 47386
9035 47386
9036 47386
9038 47386

12 CFR

19 48256
263 48256
308 48256
513 48256
701 46439
Proposed Rules:
3 45900
7 46119
34 46119
208 45900
225 45900
325 45900
567 45900
614 47502
615 47502

14 CFR

25 ..... 46428, 47202, 47445
39 ..... 46441, 46443, 46444, 47202, 47204, 47207, 47208, 47211, 47213, 47216, 47218, 47447, 47842, 48274
71 ..... 47447, 47448, 47449, 47637, 47844, 47846
97 ..... 48276, 48277
119 47798
Proposed Rules:
21 46283
39 ..... 45176, 45177, 46514, 47267, 47513, 48326
61 46283
65 46283
71 ..... 47515, 47516, 47518
77 46283
91 47269
107 46283
109 46283
121 ..... 46283, 47269

135.....46283, 47269
145.....46283
154.....46283

15 CFR

911.....45160

Proposed Rules:
303.....45177

16 CFR

305.....47449

17 CFR

4.....47221
30.....46446
240.....46446

Proposed Rules:
1.....46516

18 CFR

1304.....46930

Proposed Rules:
2.....46452
284.....48133
388.....46456

19 CFR

4.....48279
103.....47453
111.....47455

Proposed Rules:
103.....48327

20 CFR

218.....45315
225.....45315

Proposed Rules:
404.....45180, 47877
416.....45180

21 CFR

172.....46364, 46403
558.....47237

Proposed Rules:
310.....48133
334.....48133
510.....47272
558.....47272

22 CFR

41.....46948, 47460

24 CFR

905.....45730

Proposed Rules:
960.....45734
3282.....47881

25 CFR

Proposed Rules:
Ch. 1.....45787

26 CFR

1.....45745, 45772, 46081
301.....46081
602.....46081

Proposed Rules:
1.....46516, 46983, 48331

28 CFR

549.....47847

Proposed Rules
16.....47519
522.....46138

29 CFR

697.....46949

Proposed Rules
Ch. X.....46983

30 CFR

926.....46460

Proposed Rules
72.....47886

31 CFR

50.....48280
591.....45777
592.....45777

32 CFR

21.....47150
22.....47150
32.....47150
34.....47150
37.....47150

Proposed Rules
199.....46526

33 CFR

100.....46087, 47237
117.....45784, 47462, 47850, 47851
165.....45164, 45165, 47237, 47239, 47241, 47243, 47245, 47464, 47465, 47852, 47854, 48282, 48284

Proposed Rules:
110.....45190
117.....46139, 47520, 47522
165.....46984, 47277

36 CFR

4.....46477

Proposed Rules:
7.....47524

37 CFR

1.....48286
2.....48286

39 CFR

224.....47527
261.....47527
262.....47527
263.....47527
264.....47527
265.....47527
266.....47527
267.....47527
268.....47527
3001.....48293

Proposed Rules:
111.....45192

40 CFR

52.....45897, 46089, 46099, 46101, 46479, 46484, 46487, 47466, 47468, 47473, 47477, 47482
60.....46489
63.....46102
70.....46489
71.....45167
81.....47964
180.....46491, 47246, 48299, 48302, 48312
261.....46951
300.....48314

Proposed Rules:
Ch. 1.....46435
19.....45788
27.....45788
51.....46436
52.....46141, 46437, 47279, 47530, 45731, 47532, 47533
63.....46142
70.....46438
141.....47640
142.....47640
194.....47887
271.....45192
300.....48331
432.....48472

41 CFR

Proposed Rules:
51-3.....45195
51-4.....45195

42 CFR

409.....46036
411.....46036
412.....45346, 45674, 47637
413.....45346, 46036
440.....46036
483.....46036
488.....46036
489.....46036

Proposed Rules:
410.....47966
419.....47966

46 CFR

188.....45785
189.....45785

47 CFR

1.....48446
2.....46957
13.....46957
25.....47856
54.....47253
69.....46500
80.....46957
73.....45786, 46286, 46502, 47255, 47256

Proposed Rules:
73.....46359, 47282, 47283, 47284, 47285

48 CFR

1806.....45168
1807.....45168
1811.....45168
1814.....45168
1815.....45168
1817.....45168
1819.....45168
1825.....45168
1827.....45168
1844.....45168
1852.....45168
1872.....45168

49 CFR

191.....46109
192.....46109
195.....46109
390.....47860
398.....47860
571.....47485

Proposed Rules:
71.....47533
380.....47890
391.....47890
571.....46539, 46546
585.....46546
586.....46546
589.....46546
590.....46546
596.....46546
1152.....48332

50 CFR

17.....46684, 46870
300.....47256
622.....47498
635.....45169
660.....46112
648.....47264
679.....45170, 45766, 46116, 46117, 46502, 47265, 47266, 47875

Proposed Rules:
15.....46559
17.....46143, 46989
20.....47424
600.....45196
635.....45196, 47404

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 13, 2003

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Diallyl sulfides; correction; published 8-13-03
- Hydramethylnon; published 8-13-03
- Tralkoxydim; published 8-13-03

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Vessel cargo manifest information; confidentiality protection; withdrawn; published 8-13-03

Vessels in foreign and domestic trades:
- Tonnage duties; published 8-13-03

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:
- District of Columbia and United States codes; prisoners serving sentences—
  - Miscellaneous amendments; published 7-14-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Learjet; published 8-13-03

Standard instrument approach procedures; published 8-13-03

TREASURY DEPARTMENT

Terrorism Risk Insurance Program; published 8-13-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in—
- Colorado; comments due by 8-20-03; published 7-21-03 [FR 03-18447]

Soybean promotion and research order:
- United Soybean Board; membership adjustment; comments due by 8-18-03; published 6-17-03 [FR 03-15270]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Salmon; comments due by 8-22-03; published 7-23-03 [FR 03-18734]
- Atlantic coastal fisheries cooperative management—
  - Atlantic striped bass; comments due by 8-20-03; published 7-21-03 [FR 03-18491]
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 8-18-03; published 7-18-03 [FR 03-18343]

DEFENSE DEPARTMENT

Courts-Martial Manual; review; comments due by 8-19-03; published 6-20-03 [FR 03-15574]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:
- Blanket sales certificates; comments due by 8-18-03; published 8-5-03 [FR 03-19879]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Nonroad diesel engines and fuel; emissions standards; comments due by 8-20-03; published 5-23-03 [FR 03-09737]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 8-21-03; published 7-22-03 [FR 03-18302]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 8-21-03; published 7-22-03 [FR 03-18303]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Pennsylvania; comments due by 8-18-03; published 7-18-03 [FR 03-18294]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 8-22-03; published 7-23-03 [FR 03-18739]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Florida; comments due by 8-21-03; published 7-22-03 [FR 03-18500]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Florida; comments due by 8-21-03; published 7-22-03 [FR 03-18501]
- Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18153]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 8-20-03; published 7-21-03 [FR 03-18298]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 8-20-03; published 7-21-03 [FR 03-18299]
- New York; comments due by 8-20-03; published 7-21-03 [FR 03-18300]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- New York; comments due by 8-20-03; published 7-21-03 [FR 03-18301]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Texas; comments due by 8-20-03; published 7-1-03 [FR 03-16582]

Hazardous waste program authorizations:
- Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18296]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
- Georgia; comments due by 8-18-03; published 7-18-03 [FR 03-18297]

ENVIRONMENTAL PROTECTION AGENCY

Human testing; standards and criteria; comments due by 8-20-03; published 8-6-03 [FR 03-20154]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystrobin; comments due by 8-18-03; published 6-18-03 [FR 03-15261]
- Bacillus pumilus (strain QST2808); comments due by 8-18-03; published 6-18-03 [FR 03-15129]
- Glyphosate; comments due by 8-18-03; published 6-18-03 [FR 03-15128]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Federal-State Joint Board on Universal Service—
  - Lifeline and Link-Up programs; comments due by 8-18-03; published 7-17-03 [FR 03-18056]
- Telecommunications Act of 1996; implementation—
  - Numbering resource optimization; telephone number portability; comments due by 8-20-03; published 7-21-03 [FR 03-18364]

Radio stations; table of assignments:
- California and Texas; comments due by 8-22-03; published 7-18-03 [FR 03-18228]
- Michigan; comments due by 8-22-03; published 7-18-03 [FR 03-18249]
- Various States; comments due by 8-22-03; published 7-18-03 [FR 03-18227]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Electronic cargo information; advance presentation requirement; comments due by 8-22-03; published 7-23-03 [FR 03-18558]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Johnston's frankenia; delisting; comments due by 8-20-03; published 5-22-03 [FR 03-12748]
Slickspot peppergrass; comments due by 8-18-03; published 7-18-03 [FR 03-18402]
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-18-03; published 8-8-03 [FR 03-20290]
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 8-20-03; published 7-21-03 [FR 03-18468]
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Organization, functions, and authority delegations:
Temporary duty travel; issuance of motor vehicle for home-to-work transportation; comments due by 8-22-03; published 6-23-03 [FR 03-15693]
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Exhibition Hall; hours of operation; comments due by 8-18-03; published 6-17-03 [FR 03-15190]
NUCLEAR REGULATORY COMMISSION
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 8-18-03; published 7-18-03 [FR 03-18260]
NUCLEAR REGULATORY COMMISSION
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 8-18-03; published 7-18-03 [FR 03-18262]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 8-18-03; published 7-2-03 [FR 03-16694]
GROB-WERKE; comments due by 8-18-03; published 7-15-03 [FR 03-17818]
McDonnell Douglas; comments due by 8-18-03; published 7-24-03 [FR 03-18791]
Pratt & Whitney; comments due by 8-18-03; published 6-17-03 [FR 03-15224]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Rolls-Royce plc; comments due by 8-21-03; published 8-6-03 [FR 03-19475]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Saab; comments due by 8-20-03; published 7-21-03 [FR 03-18419]
Airworthiness standards:
Special conditions—
AMSAFE, Inc., Zenair model CH2000 airplane; comments due by 8-18-03; published 7-17-03 [FR 03-18071]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Special conditions—
Boeing Model 747SP airplane; comments due by 8-21-03; published 7-22-03 [FR 03-18625]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class D airspace; comments due by 8-21-03; published 7-22-03 [FR 03-18515]
Class D and Class E4 airspace; comments due by 8-18-03; published 7-17-03 [FR 03-18074]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 8-20-03; published 7-9-03 [FR 03-17253]
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Private activity bonds; definition; comments due by 8-19-03; published 5-14-03 [FR 03-11926]
Qualified retirement plans; deemed IRAs; comments due by 8-18-03; published 5-20-03 [FR 03-12675]

LIST OF PUBLIC LAWS

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H.R. 74/P.L. 108–67

To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68

To amend the PROTECT Act to clarify certain volunteer liability. (Aug. 1, 2003; 117 Stat. 883)

Last List August 1, 2003

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