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INFORMATION
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Federal Register

9–29–03 Monday
Vol. 68 No. 188 Sept. 29, 2003

Pages 55807–56136

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–4 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per ⅘ bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order, which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess Florida citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; 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 No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein is applicable to all assessable oranges, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.005 per 4/5 bushel carton to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

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

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 1, 2003, and unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida based on a crop estimate of 45 million 4/5 bushels. In comparison, last year's budgeted expenditures were $250,700. The assessment rate of $0.006 is $0.001 higher than the $0.005 rate previously in effect. This increase reflects the Committee's expectation of lower shipments in the coming year resulting in less assessment income to cover expenses. In addition, the Committee wants to increase the monies available in their reserve fund.

The major expenditures recommended by the Committee for the 2003–04 fiscal year include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and

bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. As mentioned earlier, Florida citrus shipments for the year are estimated at 45 million 4/5 bushels, which should provide $270,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve currently total approximately $23,091 and are within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

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

Although this assessment rate is in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 11,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2003–04 season are estimated at 45 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the orange, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per 4/5 bushel carton. The assessment rate of $0.006 is $0.001 higher than the current rate. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2003–04 season is estimated at 45 million 4/5 bushel cartons. Thus, the $0.006 rate should provide $270,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100, respectively.

The increase in the assessment rate is due to the Committee's expectation that shipments in the coming year will be lower affecting assessment income. The Committee also wants to replenish its reserve fund.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $247,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative assessment rates were discussed based on different estimates of assessable cartons and budget expenses. The assessment rate of $0.006 per 4/5 bushel carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 45 million 4/5 bushel cartons for the 2003–04 season taking into consideration the need for additional funds to increase reserves. This assessment rate will yield approximately $23,000 over anticipated budgeted expenses with the excess funds to be earmarked for the reserve fund.

A review of historical information and preliminary information pertaining to the upcoming 2003–04 fiscal period indicates that the grower price for the 2003–04 season could range between $1.80 and $20.40 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .03 and .33 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on July 28, 2003 (68 FR 44237). Copies of the proposed rule were also mailed or sent via facsimile to all Florida citrus handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 27, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2003–04 fiscal period began August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus fruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment actions issued in past years.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.006 per 4/5 bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: September 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–24538 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV03–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the California Date Administrative Committee (Committee) for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 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 compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order 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. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning on October 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Committee for the 2003–04 and subsequent crop years

from $0.90 to $0.75 per hundredweight of assessable dates handled.

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

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 20, 2003, and unanimously recommended 2003–04 expenditures of $225,365 and an assessment rate of $0.75 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $273,450. The recommended assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to a lower marketing and promotion budget.

Proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $5,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2003–04 Committee budget. The Committee, instead, recommended assessing handlers $0.75 per hundredweight and using $30,365 from the administrative reserves to fund the reduced Committee budget of $225,365.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the program for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)

B = 2003–04 expected shipments (260,000 hundredweight)

C = 2003–04 expenses ($225,365);

$(C - A) \div B = \$0.75$ per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves will be adequate to cover budgeted expenses. Funds in the reserve on September 30, 2004, are expected to be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 100 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. Five of the 10 handlers (50 percent) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Five of the 10 handlers (50 percent) shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of assessable dates handled. The Committee unanimously recommended 2003–04 expenditures of $225,365 and the $0.75 per hundredweight assessment rate. The assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The quantity of assessable dates for the 2003–04 crop year is estimated at 260,000 hundredweight. Thus, the $0.75 per hundredweight rate should provide $195,000 in assessment income. This along with administrative reserve funds should be adequate to meet the Committee's 2003–04 crop year expenses.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the marketing order for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $225,365 which include

marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of $0.75 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)
B = 2003–04 expected shipments (260,000 hundredweight)
C = 2003–04 expenses ($225,365);
(C − A) ÷ B = $0.75 per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves will be adequate to cover budgeted expenses. Funds in the administrative reserve on September 30, 2004, are expected to be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2003–04 season could range between $40 and $120 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2003–04 crop year as a percentage of total grower revenue could range between .6 and 2 percent.

This action decreases the assessment obligation imposed on handlers under the Federal marketing order. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on July 28, 2003 (68 FR 44241). Copies of the proposed rule were also mailed or sent via facsimile to all date handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 27, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers will soon be receiving 2003–04 crop dates from growers. In addition, the crop year begins on October 1, 2003, and the assessment rate applies to all assessable dates during the 2003–04 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2003, an assessment rate of $0.75 per hundredweight is established for California dates.

Dated: September 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–24539 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–20–AD; Amendment 39–13242; AD 2003–14–23]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and ''524H2–T Series, and Models RB211 Trent 768–60, 772–60, and 772B–60 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–14–23 applicable to Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and ''524H2–T Series, and Models RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines that was published in the **Federal Register** on July 17, 2003. RB211 Trent 768–60, 772–60, and 772B–60 turbofan engine models were included in this AD in error. This document deletes these models from the AD. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 03–18078, applicable to Rolls-Royce plc (RR) RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series, and models RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines, was published in the **Federal Register** on July 17, 2003 (68 FR 42242). The following correction is needed:

■ 1. On page 42242, in the second column, the Subject Heading, ''Airworthiness Directives; Rolls-Royce plc RB211–524G2, –524G2–T, –524G3,

–524G3–T, –524H, –524H–T, –524H2, and ''524H2–T Series, and Models RB211 Trent 768–60, 772–60, and 772B–60 Turbofan Engines'' is corrected to read ''Airworthiness Directives; Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and ''524H2–T Series Turbofan Engines''.

■ 2. In the second column of page 42242, the first sentence of the Summary, ''The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series, and models RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines with high pressure compressor (HPC) rotor stage 1 through stage 6 drums, part numbers (P/Ns) FK25502 and FW20195 installed.'' is corrected to read ''The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series turbofan engines with high pressure compressor (HPC) rotor stage 1 through stage 6 drums, part numbers (P/Ns) FK25502 and FW20195 installed.''

■ 3. In the third column of page 42242, the first sentence of the Supplementary Information, ''The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on RR RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series, and models RB211 Trent 768–60, –772–60, and 772B–60 turbofan engines with HPC stage 1 through stage 6 drums, P/Ns FK25502 and FW20195 installed.'' is corrected to read ''The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on RR RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and 524H2–T series turbofan engines with HPC stage 1 through stage 6 drums, P/Ns FK25502 and FW20195 installed.''

■ 4. In the first column of page 42243, the second sentence under FAA's Determination and Requirements of This AD ''Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series, and models RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines of this same type design'' is corrected to read ''Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and ''524H2–T series turbofan engines of this same type design,''

§ 39.13 [Corrected]

■ 5. On page 42243, in the third column, the first sentence in paragraph (c) is corrected to read as follows:

(c) This AD applies to Rolls-Royce plc RB211–524G2, –524G2–T, –524G3, –524G3–T, –524H, –524H–T, –524H2, and –524H2–T series turbofan engines with high pressure compressor (HPC) rotor stage 1 through stage 6 drums, part numbers (P/Ns) FK25502 and FW20195 installed. * * *

Issued in Burlington, MA, on September 19, 2003.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, , Aircraft Certification Service.

[FR Doc. 03–24374 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–408–AD; Amendment 39–13314; AD 2003–19–11]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Learjet Model 60 airplanes, that currently requires inspection to detect bends in or damage to the fuel crossflow tube; inspection to determine clearance between the fuel crossflow tube and the flight control cables; and replacement or repair of the tube, if necessary. This amendment requires a review of airplane maintenance records or an inspection to determine if a fuel crossflow tube having a certain part number is installed; and follow-on/corrective actions, as applicable. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations. This action is intended to address the identified unsafe condition.

DATES: Effective November 3, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–14–09, amendment 39–9303 (60 FR 36984, July 19, 1995), which is applicable to certain Learjet Model 60 airplanes, was published in the **Federal Register** on June 18, 2003 (68 FR 36502). That action proposed to require inspection to detect bends in or damage to the fuel crossflow tube; inspection to determine clearance between the fuel crossflow tube and the flight control cables; and replacement or repair of the tube, if necessary. That action also proposed to require a review of airplane maintenance records or an inspection to determine if a fuel crossflow tube having a certain part number is installed; and follow-on/corrective actions, as applicable. That action also proposed to expand the applicability of the existing AD to include additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Proposed Rule

In paragraph (a) of the proposed rule, we inadvertently specified an incorrect part number. We have revised this AD to specify the correct part number.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 145 airplanes of the affected design in the worldwide fleet. The FAA estimates that 109 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the review of airplane maintenance records/inspection required in this AD action, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $14,170, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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, Incorporation by reference, 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 removing amendment 39–9303 (60 FR 36984, July 19, 1995), and by adding a new airworthiness directive (AD), amendment 39–13314, to read as follows:

2003–19–11 Learjet: Amendment 39–13314. Docket 2000–NM–408–AD. Supersedes AD 95–14–09, Amendment 39–9303.

Applicability: Model 60 airplanes, serial numbers 60–001 through 60–145 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations, accomplish the following:

Part Identification

(a) Within 25 flight hours after the effective date of this AD, inspect the fuel crossflow tube to determine whether part number (P/N) 6026020–005 is installed. Instead of inspecting the tube, a review of airplane maintenance records is acceptable if the P/N of the tube can be positively determined from that review.

Clearance Measurement and Corrective Action

(b) For all airplanes: If P/N 6026020–005 is found installed during the review or inspection required by paragraph (a) of this AD, before further flight, measure the clearance between the fuel crossflow tube and the flight control cables to determine if it is at least 0.35 inch, per paragraph 2.B.(8) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Part Replacement, Measurement, and Repair

(c) For airplanes having serial numbers 60–001 through 60–055: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (a) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables, per paragraph 2.A. of the Accomplishment Instructions of Bombardier Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita ACO, FAA.

(d) For airplanes having serial numbers 60–056 through 60–145: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (a) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables to determine if the clearance is at least 0.35 inch, per paragraph 2.B. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair per a method approved by the Manager, Wichita ACO, FAA.

Note 1: Bombardier Alert Service Bulletin A60–28–3, Revision 2, Figure 1, Detail D, incorrectly identifies the fuel crossflow tube to be installed as P/N 6026020–001. The manufacturer is aware of this error and plans to correct the part number in the next revision of the alert service bulletin.

Part Installation

(e) As of the effective date of this AD, only fuel crossflow tubes having P/N 6026020–005 shall be installed on any airplane.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified by this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998; and Bombardier Service Bulletin 60–28–4, Revision 2, dated August 22, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on November 3, 2003.

Issued in Renton, Washington, on September 16, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24074 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–206–AD; Amendment 39–13319; AD 2003–20–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes, and Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, and Airbus Model A310 series airplanes, that currently requires replacement of Honeywell inertial reference units (IRU) with new or modified Honeywell IRUs. For certain airplanes, that existing AD also requires replacement of Litton IRUs, mode selector units (MSU), and an inertial sensor display unit (ISDU) with new Honeywell IRUs, MSUs, and a new ISDU. This amendment removes the requirement to replace the Litton IRUs, MSUs, and ISDU with Honeywell IRUs, MSUs, and ISDU. This amendment also allows the use of certain Honeywell IRUs as spare parts until the final compliance date of this AD. The actions specified in this AD are intended to prevent loss of positioning data and a display of incorrect attitude data, which could compromise the ability of the flightcrew to maintain the safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 29, 2003.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of September 22, 2003 (68 FR 49340, August 18, 2003).

Comments for inclusion in the Rules Docket must be received on or before October 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003-NM–206-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–206–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.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Program Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On August 6, 2003, the FAA issued AD 2003–16–15, amendment 39–13268 (68 FR 49340, August 18, 2003), applicable to certain Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, and Airbus Model A310 series airplanes. That AD requires replacement of Honeywell inertial reference units (IRU) with new or modified Honeywell IRUs. For certain airplanes, that AD also requires replacement of Litton IRUs, mode selector units (MSU), and an inertial sensor display unit (ISDU) with new Honeywell IRUs, MSUs, and a new ISDU. That action was prompted by notification from the Direction Geéneérale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that an operator reported loss of positioning data and the display of incorrect attitude data shortly after take-off because the airplane was moved on the ground before the IRU alignment procedure had been completed. The actions required by that AD are intended to prevent loss of positioning data and a display of incorrect attitude data.

Related Rulemaking

It should be noted that the FAA previously issued AD 2001–13–24, amendment 39–12306 (66 FR 35532, July 6, 2001), applicable to certain Airbus Model A300–600 and A310 series airplanes. The DGAC notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes and certain Airbus Model A300–600 series airplanes with certain Honeywell IRUs. The DGAC advised that an operator reported the loss of positioning data and the display of incorrect attitude data shortly after take-off, because the aircraft had been moved on the ground before the end of the IRU alignment procedure. This condition, if not corrected, could result in the loss of positioning data and a display of incorrect attitude data, which could compromise the ability of the flightcrew to maintain the safe flight and landing of the airplane. AD 2001–13–24 requires revisions to the Normal Procedures section of the airplane flight manual to prohibit movement of the airplane during IRU alignment and to provide instructions to the flightcrew to check the navigational display system to ensure correct display of all primary attitude and heading information prior

to flight. That action is intended to address the identified unsafe condition.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2003–16–15, we reviewed the requirements of that AD and noted incorrect information concerning the removal and replacement of certain Litton IRU equipment. The applicability section of AD 2003–16–15 states that that AD is applicable to certain Airbus Model A300–600 and A310 series airplanes equipped with certain Honeywell IRU part numbers. Therefore, Airbus Model A300–600 and A310 series airplanes equipped with Litton IRUs are not subject to the requirements of AD 2003–16–15.

The procedures for performing the actions required by AD 2003–16–15 are stated in Airbus Service Bulletins A300–34–6135, Revision 01 (for Model A300–600 series airplanes); and A310–34–2158, Revision 01 (for Model A310 series airplanes); both dated September 10, 2001. These service bulletins describe procedures for replacement of Honeywell IRUs with new or modified Honeywell IRUs, and were identified as mandatory service bulletins in French airworthiness directive 2001–303(B), dated July 25, 2001. Airbus Service Bulletins A300–34–6135, Revision 01; and A310–34–2158, Revision 01; specify prior or concurrent accomplishment of Airbus Service Bulletins A300–34–6082, Revision 05, dated February 13, 1998; and A310–34–2104, dated May 12, 1995; as applicable. Service Bulletins A300–34–6082 and A310–34–2104 both include provisions for those operators who have previously replaced Litton IRUs with Honeywell IRUs. For several specific aircraft these service bulletins specify the replacement of Litton IRUs with Honeywell IRUs as required changes associated with mandatory service bulletins. As a result, the replacement of certain Litton IRUs with certain Honeywell IRUs was incorrectly identified as a requirement in paragraphs (c) and (d) of AD 2003–16–15.

Therefore, one of the purposes of this AD is to remove that requirement to replace certain Litton IRUs with certain Honeywell IRUs. The Litton IRUs are designed to provide clear indication to the flightcrew if the aircraft has been moved during IRU alignment, and are not subject to the unsafe condition addressed in AD 2003–16–15.

In addition, we have removed paragraph (e), Parts Installation, of AD 2003–16–15, which prohibits the installation of certain Litton and Honeywell IRU part numbers. As stated previously, the Litton IRUs are not subject to the unsafe condition addressed by this AD. Paragraph (e)(1) of AD 2003–16–15 requires that, as of September 22, 2003 (the effective date of that AD), operators no longer install Honeywell IRUs having part numbers HG1050BD02 and HG1050BD05. The actions required by AD 2003–15–16 are specified in Airbus Service Bulletins A300–34–6135, Revision 01; and A310–34–2158, Revision 01; both dated September 10, 2001. These bulletins state that ''it is impossible to mix old P/Ns with new P/Ns.'' Therefore it is necessary for the operators to replace or modify all three IRUs installed on each aircraft simultaneously. It is the understanding of the FAA that operators often only stock one spare unit in each field spares location. In order to adequately prepare for the possibility of IRU failures in the field after the effective date of that AD, each operator would have to replace their current spare IRUs with three updated IRUs, thus increasing their allotment of spares threefold. It is unlikely that Honeywell will be able to distribute the necessary number of IRUs to the operators' field spares locations prior to the effective date of this AD. It is likely that delay of delivery of these replacement IRUs would result in flight delays and/or cancellations. Continued compliance with AD 2001–13–24, described previously, provides adequate assurance that safety will not be compromised by continued use of the subject Honeywell IRUs until the parts replacement requirements of this AD are accomplished. Therefore, we have determined that a Parts Installation paragraph is not required in this AD.

FAA's Determination

In light of the above, we have determined that it is necessary to issue this supersedure AD to ensure the continued operational safety of the fleet.

U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of 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 supersedes AD 2003–16–15 to continue to require replacement of Honeywell IRUs with new or modified Honeywell IRUs. This AD removes all references to the replacement of Litton IRUs, MSUs, and a new ISDU with Honeywell IRUs, MSUs, and a new ISDU. This AD also removes paragraph (e), Parts Installation, of AD 2003–16–15, and allows the use of certain Honeywell IRUs as spare parts until the final compliance date of this AD. The actions are required to be accomplished in accordance with Airbus Service Bulletin A300–34–6135, Revision 01 (for Model A300–600 series airplanes); and Airbus Service Bulletin A310–34–2158, Revision 01 (for Model A310 series airplanes); both dated September 10, 2001.

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–206-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, Incorporation by reference, 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 removing amendment 39–13268 (68 FR 49340, August 18, 2003), and by adding a new airworthiness directive (AD), amendment 39–13319, to read as follows:

2003–20–01 Airbus: Amendment 39–13319. Docket 2003–NM–206–AD. Supersedes AD 2003–16–15, Amendment 39–13268.

Applicability: The series airplanes, certificated in any category, listed in the following table:

TABLE—APPLICABILITY

Model—	Equipped with Honeywell initial reference units having part No.	Excluding airplanes modified in accordance with—
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); and A310.	HG1050BD02 or HG1050BD05	Airbus Modification 12304 in production; or Airbus Service Bulletin A300–34–6135, Revision 01, dated September 10, 2001 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–34–2158, Revision 01, dated September 10, 2001 (for Model A310 series airplanes); as applicable.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of positioning data and a display of incorrect attitude data to the flightcrew, which could compromise the ability of the flightcrew to maintain the safe flight and landing of the airplane, accomplish the following:

Replacement of Inertial Reference Units (IRU)

(a) Within 35 months after the effective date of this AD: Replace the existing Honeywell IRUs with new or modified Honeywell IRUs, per the Accomplishment Instructions specified in Airbus Service Bulletin A300–34–6135, Revision 01 (for Model A300 B4–600, A300 B4–600R, and A300–F4–600R (collectively called A300–600 series airplanes)); or Airbus Service Bulletin A310–34–2158, Revision 01 (for Model A310 series airplanes); both dated September 10, 2001; as applicable.

(b) Accomplishment of the replacement specified in Airbus Service Bulletin A300–34–6135 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–34–2158 (for Model A310 series airplanes); both dated March 9, 2001; as applicable; is acceptable for compliance with the replacement requirement of paragraph (a) of this AD.

Note 1: Airbus Service Bulletin A300–34–6135, Revision 01; and Airbus Service Bulletin A310–34–2158, Revision 01; both dated September 10, 2001; reference Honeywell Service Bulletin HG1050BD–34–0009, dated April 17, 2001; and Honeywell Service Bulletin HG1050BD–34–0010, Revision 001, dated April 16, 2001; as additional sources of service information for accomplishing the replacements required by this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–34–6135, Revision 01, dated September 10, 2001; or Airbus Service Bulletin A310–34–2158, Revision 01, dated September 10, 2001; as applicable. This incorporation was approved previously by the Director of the Federal Register as of September 22, 2003 (68 FR 49340, August 18, 2003). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–303(B), dated July 25, 2001.

Effective Date

(e) This amendment becomes effective upon date of publication in the **Federal Register**.

Issued in Renton, Washington, on September 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–24487 Filed 9–24–03; 1:09 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14905; Airspace Docket No. 03–AGL–04]

Modification of Class E Airspace; Cheboygan, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Cheboygan, MI. area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Cheboygan County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Cheboygan County Airport.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

ADDRESSES: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 4, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Cheboygan, MI (68 FR 33426). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Cheboygan, MI, to accommodate aircraft executing instrument flight procedures into and out of Cheboygan County Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL MI E5 Cheboygan, MI [Revised]

Cheboygan County Airport, MI
(Lat. 45°39′13″ N., long. 84°31′109″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cheboygan County Airport.

* * * * *

Issued in Des Plaines, Illinois, on September 5, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24607 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14906; Airspace Docket No. 03–AGL–05]

Modification of Class E Airspace; West Union, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at West Union, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) have been developed for Alexander Salamon Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Alexander Salamon Airport.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devot Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 4, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at West Union, OH (68 FR 33427). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which

is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at West Union, OH, to accommodate aircraft executing instrument flight procedures into and out of Alexander Salamon Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 West Union, OH [Revised]

West Union, Alexander Salamon Airport, OH (Lat. 38°51′05″N., long. 83°33′59″W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Alexander Salamon Airport.

* * * * *

Issued in Des Plaines, Illinois, on September 5, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24606 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14693; Airspace Docket No. 03–AGL–03]

Modification of Class E Airspace; South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at South Bend, IN. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several runways have been developed for South Bend Regional Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at South Bend Airport.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 21, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at South Bend, IN (68 FR 19470). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and white transiting between the en route and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at South Bend, IN, to accommodate aircraft executing instrument flight procedures into and out of South Bend Regional Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 South Bend, IN [Revised]

South Bend, South Bend Regional Airport, IN
(Lat. 41°42′31″ N., long. 86°19′02″ W.)
Niles, Jerry Tyler Memorial Airport, MI
(Lat. 41°50′09″ N., long. 86°13′31″ W.)
Gipper VORTAC
(Lat. 41°46′07″ N., long. 86°19′06″ W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of South Bend Regional Airport and within 4.4 miles south and 7 miles north of the South Bend ILS localizer east course, extending from South Bend Regional Airport to 10.5 miles east of the ILS outer marker and within 4.4 miles west and 7 miles east of the Gipper VORTAC 001° radial, extending from the South Bend Regional Airport to 10.5 miles north of the VOR and within a 6.4-mile radius of the Jerry Tyler Memorial Airport, excluding that airspace within the Dowagiac, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on September 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24602 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–16]

Establishment of Class E Airspace; Richfield Municipal Airport, Richfield, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of the final rule; correction that was published in the **Federal Register** August 12, 2003 (68 FR 47844), airspace Docket 02–ANM–16. Also, this action corrects the effective date back to September 4, 2003.

EFFECTIVE DATE: 0900 UTC, September 4, 2003

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, ANM–520.7, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (425) 227–2527; FAA Docket No. 01–ANM–16.

SUPPLEMENTARY INFORMATION:

The Rule

Airspace Docket No. 02–ANM–16, published August 12, 2003 (68 FR 47844), corrected an error in the coordinates of the east boundary description of the Class E airspace at Richfield Municipal Airport, Richfield, UT. This action corrects another geographic coordinate to the Class E Airspace at Richfield Municipal Airport, Richfield, UT. This action also corrects the effective date back to September 4, 2003.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Richfield Municipal Airport, Richfield, UT, as published in the **Federal Register** on August 12, 2003 (68 FR 47844), (Federal Register Document FAA–01–ANM–16; page 47844, column 3) are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ANM UT E5 Richfield Municipal Airport, UT (Corrected)

[lat. 38°44′11″ N., long. 112°05′56″ W.]

That airspace extending upward from 700 feet above the surface of the earth within 7.5 mile radius of the Richfield Municipal Airport; and that airspace extending upward from 1,200 feet, above the surface of the earth bounded by a line beginning at lat. 39°24′30″ N., long. 112°27′41″ W.; to lat. 39°16′00″ N., long. 112°00′00″ W.; to lat. 39°42′00″ N., long. 110°54′00″ W.; to lat. 39°27′00″ N., long. 110°46′00″ W.; to lat. 39°03′00″ N., long. 111°30′00″ W.; to lat. 38°32′00″ N., long. 110°42′00″ W.; to lat. 38°20′00″ N., long. 110°48′00″ W.; to lat. 38°40′00″ N., long. 111°47′00″ W.; to 38°16′40″ N., long. 112°36′40″ W.; to lat. 38°29′00″ N., long. 112°53′00″ W.; to lat. 39°11′30″ N., long. 112°34′00″ W.; thence to the point of origin; excluding that airspace within Federal Airways and the Price, UT, Huntington, UT, Milford, UT, and Delta, UT Class E airspace.

The effective date on Airspace Docket No. 01–ANM–16 is hereby corrected to September 4, 2003.

Issued in Seattle, Washington, on September 11, 2003.

ViAnne Fowler,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–24608 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 135, and 145

[Docket No.:FAA–1999–5836]

RIN 2120–AC38

Repair Stations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The FAA is delaying the effective date of a final rule that amends the regulations for aeronautical repair stations. This action is necessary to give repair station certificate holders more time to develop required manuals using recently issued FAA guidance material before submitting the manuals to FAA for acceptance. Also this action will allow repair station certificate holders to follow FAA guidance material for requesting FAA approval of contract maintenance functions.

DATES: The effective date of the final rule amending 14 CFR parts 91, 121, 135, and 145 published on August 6, 2001, at 66 FR 41088 is delayed until January 31, 2004, with the following exception: § 145.163 remains effective April 6, 2005.

FOR FURTHER INFORMATION CONTACT: Diana Frohn, Flight Standards Service, Aircraft Maintenance Division, General Aviation and Repair Station Branch, AFS–340, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7027; e-mail *diana.frohn@faa.gov.*

SUPPLEMENTARY INFORMATION:

The Final Rule

On July 30, 2001, the FAA issued Repair Stations; Final Rule with Request for Comments and Direct Final Rule with Request for Comments (66 FR 41088; August 6, 2001). That final rule updates and revises part 145 of Title 14, Code of Federal Regulations, which prescribes the regulations for aeronautical repair stations. In that rulemaking action, we established a new requirement that each repair station must maintain and use a current repair station manual and a quality control manual. We also prescribed the contents of these manuals.

Initially, the final rule was to become effective April 6, 2003. However, on October 21, 2002, the FAA received a petition from the Aircraft Electronics Association, the Aerospace Industries Association, the Aviation Suppliers

Association, and the National Air Transportation Association. Those petitioners requested that the FAA extend the effective date of the final rule arguing that we had not yet published advisory material and guidance explaining how to produce an acceptable manual. Further, the petitioners asserted that without advisory material, we could not adequately train FAA personnel. We agreed with the petitioners and extended the effective date of the final rule to October 3, 2003 (68 FR 125429, March 14, 2003; 68 FR 17545, April 10, 2003).

On July 3, 2003, the FAA issued Advisory Circular No. 145–9 (AC 145–9), Guide for Developing and Evaluating Repair Station and Quality Control Manuals. That document provides information and guidance material for developing and evaluating repair station manuals and quality control manuals. The material describes an acceptable means, but not the only means, to develop a manual and comply with the rules contained in part 145. Interested parties may access AC 145–9 at the following Internet Web site: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgWebcomponents.nsf/HomeFrame?OpenFrameSet.*

On July 22, 2003, the Aircraft Electronics Association, the Aviation Repair Station Association, and the National Air Transportation Association submitted another petition requesting that the FAA further extend the effective date of the final rule. The petitioners note that the FAA issued material to guide repair stations in developing the manuals required in part 145 only 90 days before the effective date of the rule. The petitioners contend that 90 days is not enough time to develop manuals using the guidance materials. Therefore, the petitioners request that we extend the effective date of the final rule an additional 120 days.

We agree with the petitioners that additional time is necessary to allow repair station certificate holders to prepare repair station manuals and quality control manuals following the guidance provided in AC 145–9. Therefore, we find that a 120-day extension is in the public interest.

The petitioners also note that § 145.221 references sections in 14 CFR parts 121, 125, and 135 related to service difficulty reporting, which have not become effective. The FAA is addressing this issue in a separate rulemaking action.

Finally, the delay in the effective date of the final rule does not impose any new requirements or any additional burden on the regulated public. However, the 120-day extension will delay realization of some cost savings provided by the rule. We, therefore, find there are no additional costs, aside from the delay in realizing some cost savings, or benefits associated with this action.

Good Cause for Immediate Adoption

In accordance with 5 U.S.C. 553(b)(3)(B), I find good cause for issuing this rule without prior notice and comment. Seeking public comment is impracticable, unnecessary, and contrary to the public interest. This delay of effective date will give repair stations sufficient time to use FAA guidance material in preparing to operate under the amended regulations for repair stations. Given the imminence of the effective date, seeking prior public comments on this temporary delay would be impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of this rule.

In consideration of the foregoing, parts 91, 121, 135, and 145 are amended to delay the effective date of the final rule by 120 days.

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

Marion C. Blakey,

Administrator.

[FR Doc. 03–24546 Filed 9–24–03; 2:55 pm]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule (''Rule'') by publishing minor, technical changes to the requirements for EnergyGuide labels for dishwashers to conform the labels to a new test procedure published by the Department of Energy (''DOE'') on August 29, 2003 (68 FR 51887).

EFFECTIVE DATE: The amendments become effective on February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202) 326–2889.

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule covers several categories of major household appliances including dishwashers.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

I. Recent DOE Test Procedure Change

On August 29, 2003, DOE published amendments to the test procedure manufacturers must use to determine the energy use of their dishwashers (68 FR 51887). The DOE amendments provide a new test procedure for testing the energy consumption of soil-sensing models, requires that manufacturers include the measurement of standby power consumption in cost and energy use for all dishwashers, and add new specifications for instrumentation requirements. Manufacturers may begin using this amended test procedure on September 29, 2003 and must use it for energy representations by February 25, 2004.[2] The amended DOE test procedure also changes the number of annual cycles used to estimate the energy consumption of a dishwasher in one year. The amendments reduce that number from 264 to 215 cycles per year (correlating to about 4 washloads per week).

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[1] 42 U.S.C. 6294. The statute also requires the DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Under EPCA, all energy use representations (including information on the EnergyGuide labels) must reflect the amended test procedure beginning 180 days after DOE prescribes the change in the procedure (*i.e.*, the date the rule is published in the **Federal Register**). 42 U.S.C. 6293(c).

As a result of this change, the Commission must amend the required explanatory information on the EnergyGuide labels for dishwashers. Currently, section 305.11(a)(5)(i)(H)(2) of the Rule requires dishwasher labels to state ''five washloads a week'' as a basis for the energy use and annual operating cost information on the label. The Commission is amending that language to read ''four washloads a week'' to reflect the new 215 cycles per year figure required by the amended test procedure. Pursuant to 42 U.S.C. 6293(c)(2), all dishwasher labels for units produced after February 25, 2004 (*i.e.*, 180 days after publication of DOE's amendment) must reflect the results of the new DOE test procedure. Accordingly, the effective date of the Commission's amendment is February 25, 2004. Manufacturers, however, may begin using the reference to four washloads per week when they start using the results from the amended test procedure on their labels.[3] This will ensure that the reference to washloads on the label is consistent with the test used by the manufacturer.

II. Administrative Procedure Act

The amendments published in this notice involve minor, technical conforming changes to the labeling requirements in the Rule. The minor or conforming amendments require changes to the EnergyGuide label so that the information is accurate and reflects recent DOE changes to the test procedures for these products. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[4] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.11(a)(5)(i)(H)(2) is amended to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(H) * * *

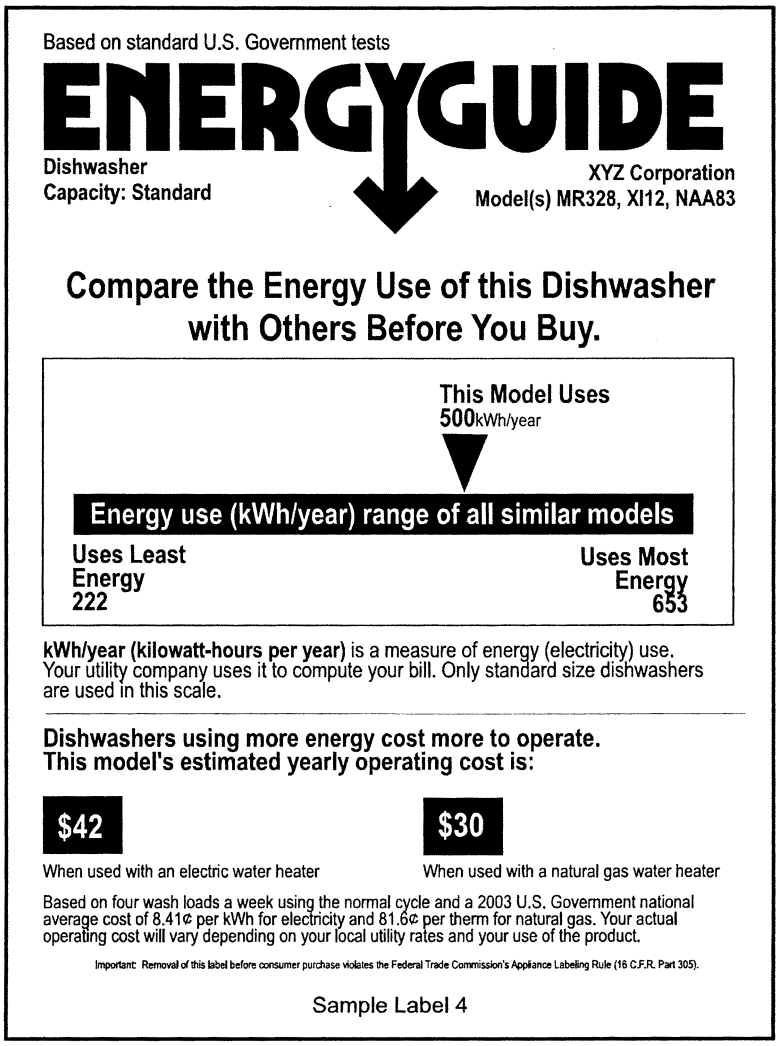
(2) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures): [Clothes Washers, or Dishwashers] using more energy cost more to operate. This model's estimated yearly operating cost is: [Electric cost figure will be boxed] when used with an electric water heater [Gas cost figure will be boxed] when used with a natural gas water heater. Based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers], and a [Year] U.S. Government national average cost of $__ per kWh for electricity and $__ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

* * * * *

■ 3. Appendix L is amended by revising Sample Label 4 of part 305 to read as follows:

[3] See 68 FR at 51888. On August 11, 2003 (68 FR 47449), the Commission published new ranges of comparability for standard capacity dishwashers. Manufacturers must use these ranges on labels by November 10, 2003. Under 42 U.S.C. 6296(c), the ''Commission may not require labels be changed to reflect the revised tables of ranges more often than annually.'' Accordingly, the Commission will not be able to require new ranges to reflect the new test procedure results until November 10, 2004.

[4] 44 U.S.C. 3501–3520.



Sample Label 4

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–24570 Filed 9–26–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

Labeling

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 200 to 299, revised as of April 1, 2003, in the first sentence of the introductory text of § 201.122, on page 54, the phrase " 'Rx only' " is removed and the phrase " 'Caution: For manufacturing, processing, or repacking' " is added in its place, and the phrase " 'Caution: Federal law prohibits dispensing without prescription' " is removed and the phrase " 'Rx only' " is added in its place.

[FR Doc. 03–55525 Filed 9–26–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Ivermectin and Pyrantel Pamoate Chewable Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Heska Corp. The ANADA provides for use of chewable tablets containing ivermectin and pyrantel pamoate for prevention of heartworm disease and for treatment and control of certain gastrointestinal parasites in dogs.

DATES: This rule is effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525, filed ANADA 200–338 that provides for veterinary prescription use of TRI–HEART PLUS (ivermectin and pyrantel pamoate) Chewable Tablets for prevention of canine heartworm disease caused by *Dirofilaria immitis* and for treatment and control of ascarids (*Toxocara canis*, *Toxascaris leonina*) and hookworms (*Ancylostoma caninum*, *A. braziliense*, and *Uncinaria stenocephala*) in dogs. Heska Corp.'s TRI–HEART PLUS Chewable Tablets is approved as a

generic copy of Merial's HEARTGARD Plus Chewables, approved under NADA 140–971. ANADA 200–338 is approved as of August 13, 2003, and 21 CFR 520.1196 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Heska Corp. is not currently listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Heska Corp.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''063604'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525.	063604
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
063604	Heska Corp., 1825 Sharp Point Dr., Fort Collins, CO 80525
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 4. Section 520.1196 is amended by revising paragraph (b) to read as follows:

§ 520.1196 Ivermectin and pyrantel pamoate chewable tablets.

* * * * *

(b) *Sponsors.* See Nos. 050604, 051311, and 063604 in § 510.600(c) of this chapter.

* * * * *

Dated: September 15, 2003.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 03–24496 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two new animal drug applications (NADAs) and three abbreviated new animal drug applications (ANADAs) from Delmarva Pharmaceuticals, Inc., to Virbac AH, Inc.

DATES: This rule is effective September 29, 2003.

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

SUPPLEMENTARY INFORMATION: Delmarva Laboratories, Inc., 1500 Huguenot Rd., suite 106, Midlothian, VA 23113, has informed FDA that it has transferred ownership of, and all rights and interest in, the following two approved NADAs and three approved ANADAs to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137:

Application No.	21 CFR Section	Trade Name
NADA 065–492	520.88f	ROBAMOX V (amoxicillin trihydrate) Tablets
NADA 065–495	520.88b	ROBAMOX V (amoxicillin trihydrate)
ANADA 200–071	522.900	EUTHASOL Solution
ANADA 200–291	520.447	CLINSOL (clindamycin hydrochloride) Liquid
ANADA 200–316	520.446	CLINTABS (clindamycin hydrochloride) Tablets

Accordingly, the agency is amending the regulations in §§ 520.88b, 520.88f, 520.446, 520.447, and 522.900 to reflect the transfer of ownership.

Following these changes of sponsorship, Delmarva Laboratories, Inc., is no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Delmarva Laboratories, Inc.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Delmarva Laboratories, Inc.'' and in the table in paragraph (c)(2) by removing the entry for ''059079''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.88b [Amended]

■ 4. Section 520.88b *Amoxicillin trihydrate for oral suspension* is amended in paragraph (c) by removing ''059079'' and by adding in its place ''051311''.

§ 520.88f [Amended]

■ 5. Section 520.88f *Amoxicillin trihydrate tablets* is amended in paragraph (b) by removing ''059079'' and by adding in its place ''051311''.

§ 520.446 [Amended]

■ 6. Section 520.446 *Clindamycin capsules and tablets* is amended in paragraph (b)(3) by removing ''059079'' and by adding in its place ''051311''.

§ 520.447 [Amended]

■ 7. Section 520.447 *Clindamycin liquid* is amended in paragraph (b)(2) by removing ''059079'' and by adding in its place ''051311''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.900 [Amended]

■ 9. Section 522.900 *Euthanasia solution* is amended in paragraph (b)(1) by removing ''059079'' and by adding in its place ''051311''.

Dated: September 15, 2003.

Steven D. Vaughn,

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

[FR Doc. 03–24492 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for oral use of two strengths of pyrantel pamoate suspension in dogs for the management of various internal parasites.

DATES: This rule is effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–352 for PRIMEX CANINE (pyrantel pamoate) and PRIMEX CANINE–2X (pyrantel pamoate). PRIMEX CANINE contains 2.27 milligrams (mg) pyrantel base per milliliter (/mL); PRIMEX CANINE–2X contains 4.54 mg pyrantel base/mL. Both products are for oral use in dogs and puppies for the removal of large roundworms (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*); and in dogs, puppies, and lactating bitches to prevent reinfections of *T. canis*. First Priority's PRIMEX CANINE and PRIMEX CANINE–2X are approved as generic copies of Pfizer, Inc.'s RFD Suspension and NEMEX–2 Suspension, respectively, approved under NADA 100–237. ANADA 200–352 is approved as of August 20, 2003, and the regulations are amended in § 520.2043 (21 CFR 520.2043) to reflect the approval. The basis of approval is discussed in the freedom of information summary. In addition, § 520.2043 is being amended to correct the spelling of one of the subject parasites.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.2043 [Amended]

■ 2. Section 520.2043 *Pyrantel pamoate suspension* is amended in paragraph (b)(2) by numerically adding ''058829,''; and in paragraph (d)(2)(i)(B) by removing ''*Toxascarias*'' and by adding in its place ''*Toxascaris*''.

Dated: September 15, 2003.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 03–24493 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Copper Naphthenate Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for topical use of copper naphthenate solution on horses and ponies as an aid in treating thrush caused by organisms susceptible to copper naphthenate.

DATES: This rule is effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–304 for PRITOX, a solution of copper naphthenate for topical application on horses and ponies as an aid in treating thrush caused by organisms susceptible to copper naphthenate. First Priority's PRITOX is approved as a generic copy of Ft. Dodge Animal Health's KOPERTOX, approved under NADA 12–991. The ANADA is approved as of July 25, 2003, and 21 CFR 524.463 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524–OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.463 [Amended]

■ 2. Section 524.463 *Copper naphthenate solution* is amended in paragraph (b) by removing ''*Sponsor*'' and by adding in its place ''*Sponsors*''; and by removing ''000856 and 017135'' and by adding in its place ''000856, 017135, and 058829''.

Dated: September 15, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–24495 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for the use of single-ingredient Type A medicated articles containing monensin and chlortetracycline to make two-way combination drug Type C medicated feeds for broiler chickens.

DATES: This rule is effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed ANADA 200–354 for use of PENNCHLOR (chlortetracycline) and COBAN (monensin) Type A medicated articles to make two-way combination drug Type C medicated feeds for broiler chickens. Pennfield Oil Co.'s ANADA 200–354 is approved as a generic copy of Alpharma, Inc.'s NADA 121–553 for combination use of AUREOMYCIN (chlortetracycline) and COBAN. The ANADA is approved as of August 15, 2003, and the regulations are amended in 21 CFR 558.355 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.355 [Amended]

■ 2. Section 558.355 *Monensin* is amended in paragraph (f)(1)(xiv)*(b)* after ''046573'' by adding ''and 053389''.

Dated: September 11, 2003.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 03–24436 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 26, 161, 164, and 165

[USCG–2003–14757]

RIN 1625–AA67

Automatic Identification System; Vessel Carriage Requirement

AGENCY: Coast Guard, DHS.

ACTION: Policy statement.

SUMMARY: The Coast Guard is announcing its policy and intent to establish one uniform compliance date for U.S. domestic vessels subject to Automatic Identification System carriage regulations while transiting a Vessel Traffic Service (VTS) area. On July 1, 2003, the Coast Guard published a temporary interim rule that established 3 different compliance dates, depending on particular VTS areas. This policy statement aligns these dates with the deadline date of the Maritime Transportation Security Act of 2002.

DATES: This policy is effective on September 29, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Policy Statement, contact Mr. Jorge Arroyo, U.S. Coast Guard Office of Vessel Traffic Management (G–MWV), by telephone 202–267–6277, toll-free telephone 1–800–842–8740 ext. 7–6277, or electronic mail *JArroyo@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled ''Automatic Identification System; Vessel Carriage Requirement'' in the **Federal Register** (68 FR 39353). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41913). The temporary interim rule established an Automatic Identification System (AIS) compliance date that varies depending upon VTS area. They are as follows:

(1) For VTS St. Marys River, not later than December 31, 2003;

(2) For VTS Berwick Bay, VMRS Los Angeles/Long Beach, VTS Lower Mississippi River, VTS Port Arthur and VTS Prince William Sound, not later than July 1, 2004; and

(3) For VTS Houston-Galveston, VTS New York, VTS Puget Sound, and VTS San Francisco, not later than December 31, 2004.

These deadline dates were established to coincide with anticipated AIS-capability at each of these respective ports via our Ports and Waterways Safety System (PAWSS) upgrades. PAWSS is an effort to establish a national transportation system that collects, processes, and disseminates information on the marine operating environment and maritime vessel traffic in major U.S. ports and waterways. Work continues on schedule in our PAWSS process; however, we recognize that having differing deadline dates has caused unwarranted confusion and may place certain vessels at a disadvantage of reaping market benefits. Therefore, the Coast Guard will amend its temporary interim rule, by a forthcoming final rule, that will adopt December 31, 2004, as the compliance date for all VTS users, not on international voyage, that are subject to the provisions of 33 CFR 164.46(b).

Policy Statement

Until the Coast Guard publishes its final rule regarding AIS carriage requirements, the following policy applies:

The Coast Guard will not enforce the deadline dates as stated in 33 CFR 164.46(c)(1) through (4).

How Long Will This Policy Remain in Effect?

This policy will remain in effect until publication of the final rule regarding AIS carriage [USCG 2003–14757], that we anticipate publishing prior to October 25, 2003. In the final rule we intend to adopt December 31, 2004, as the deadline date for domestic AIS carriage for those vessels denoted in 33 CFR 164.46(b).

Dated: September, 22 2003.

T.H. Gilmour,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–24571 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0303; FRL–7327–3]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethomorph in or on brassica, leafy greens, subgroup 5B; taro, corm; taro, leaves; and vegetable, fruiting, group 8. EPA is also deleting certain dimethomorph tolerances that are no longer needed as a result of this action. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 29, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0303, must be received on or before November 28, 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: 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 an are agricultural producer, food manufacturer, and 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–2003–0303. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of August 20, 2003 (68 FR 50138) (FRL–7321–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6483 and 3E6558) by IR-4, 681 US Highway #1 South, New Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by BASF Corporation, the registrant.

The petitions requested that 40 CFR 180.493 be amended by establishing tolerances for residues of the fungicide, dimethomorph,(*E*,*Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the following commodities: Brassica, leafy greens, subgroup 5B at 20.0 part per million (ppm); taro, corm at 0.5 ppm; taro, leaves at 6.0 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. The tolerance petition for vegetable, fruiting, group 8 was subsequently amended to propose the tolerance at 1.5 ppm. EPA is also deleting tolerances for tomato, fruit at 0.5 ppm, and tomato, paste at 1.0 ppm established under section 180.493 (a). These commodities will be covered by the tolerance for vegetable, fruiting, group 8 at 1.5 ppm. There were no comments received on these petitions.

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 rasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of dimethomorph on brassica, leafy greens, subgroup 5B at 20.0 ppm; taro, corm at 0.5 ppm; taro, leaves at 6.0 ppm; and vegetable, fruiting, group 8 at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed in the **Federal Register** of September 27, 2002 (67 FR 60916) (FRL–7199–2).

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 intraspecies 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 1×10^{-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 dimethomorph used for human risk assessment is shown is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHOMORPH FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13-50 years of age	Not applicable	Not applicable	No endpoint attributable to a single dose was identified.
Acute dietary general population including infants and children	Not applicable	Not applicable	No endpoint attributable to a single dose was identified
Chronic dietary all populations	NOAEL= 11 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/Special FQPA SF = 0.1 mg/kg/day	Carcinogenicity study in the rat LOAEL = 46.3 mg/kg/day based on decreased body weight and statistically significant increases in liver lesions in female rats
Short-term dermal (1 to 7 days)	Oral study NOAEL= 60 mg/kg/day (dermal absorption factor = 5 %)	LOC for MOE = 100	Developmental toxicity study in the rat LOAEL = 160 mg/kg/day based on decreased body weight, decreased body weight gain, and decreased food consumption
Intermediate-term dermal (1 week to several months)	Oral study NOAEL= 15 mg/kg/day (dermal absorption factor = 5 %	LOC for MOE = 100	Subchronic feeding study in dogs LOAEL = 43 mg/kg/day based on decreased absolute and relative prostate weight and possible threshold liver effects
Long-term dermal (several months to lifetime)	Not applicable	Not applicable	The current use pattern does not indicate a concern for long-term exposure/risk
Short-term inhalation (1 to 7 days)	Oral study NOAEL= 60 mg/kg/day (inhalation absorption factor = 100 %)	LOC for MOE = 100	Developmental toxicity study in the rat LOAEL = 160 mg/kg/day based on decreased body weight, decreased body weight gain, and decreased food consumption
Intermediate-term nhalation (1 week to several months)	Oral study NOAEL= 15 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100	Subchronic feeding study in dogs LOAEL = 43 mg/kg/day based on decreased absolute and relative prostate weight and possible threshold liver effects
Long-term inhalation (several months to lifetime)	Not applicable	Not applicable	The current use pattern does not indicate a concern for long-term exposure/risk

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHOMORPH FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Endpoint for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Not applicable	Not applicable	This chemical is classified as ''not likely'' to be a human carcinogen

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on [grape; grape, raisin; hop, dried cones; lettuce, head; lettuce, leaf; potato, wet peel; tomato; tomato, paste; vegetable, bulb, group 3; and vegetable, cucurbit, group 9. Time-limited tolerances are also established for residues of dimethomorph in connection with use of the pesticide under emergency exemptions pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act for cantaloupe, cucumber, squash, and watermelon at 1.0 ppm set to expire on December 31, 2003. Additionally, time-limited tolerances are established for inadvertent or indirect residues of dimethomorph in or on the following raw agricultural commodities when present therein as a result of the application of dimethomorph to growing crops: grain, cereal group, fodder; grain, cereal group, forage; grain, cereal group, grain; grain, cereal group, hay; and grain, cereal group, straw at 0.15 ppm, set to expire on May 12, 2004. Risk assessments were conducted by EPA to assess dietary exposures from dimethomorph in food as follows:

i. *Acute exposure.* A quantitative acute dietary exposure and risk assessment was not conducted for dimethomorph since an acute oral endpoint attributed to a single-dose exposure could not be identified in any of the toxicology studies, including developmental and maternal toxicity in the developmental toxicity studies. No acute risk is expected from exposure to dimethomorph.

ii. *Chronic exposure.* In conducting this acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™/FCID) which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions was made for the chronic exposure assessment: The chronic dietary risk assessment for dimethomorph assumed tolerance level residues and 100% crop treated (Tier 1) for all registered and proposed crops.

iii. *Cancer.* EPA has classified dimethomorph as a ''not likely'' human carcinogen. Therefore, a quantitative cancer dietary exposure and risk assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethomorph in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dimethomorph.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. ince DWLOCs address total aggregate exposure to dimethomorph they are further discussed in the aggregate risk sections in Unit E.

Based on the GENEEC and SCI-GROW models the EECs of dimethomorph for acute exposures are estimated to be 79.8 parts per billion (ppb) for surface water and 0.30 ppb for ground water. The EECs for chronic exposures are estimated to be 28.5 ppb for surface water and 0.30 ppb for ground water.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would 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 EECs from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to

dimethomorph they are further discussed in the aggregate risk Unit E.

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).

Dimethomorph is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from 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 dimethomorph has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to dimethomorph and any other substances and dimethomorph 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 dimethomorph has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for dimethomorph and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X. The FQPA SF is removed because: Acceptable developmental toxicity studies in the rat and the rabbit are available, as is an acceptable 2–generation reproduction study in the rat and there is no indication of qualitative or quantitative increased susceptibility of rats and rabbits to in utero or postnatal exposure. A developmental neurotoxicity study is not required for dimethomorph. The dietary (food and water) exposure assessments are not expected to underestimate the potential exposures for infants and children from the use of dimethomorph. Residential exposure to dimethomorph is not expected since there are no registered residential uses for the pesticide.

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, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP 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, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethomorph from food will utilize 7% of the cPAD for the U.S. population, 0.8% of the cPAD for all infants < 1 year old, 16% of the cPAD for children 1–2 years old (the most highly exposed population subgroup), and 6% of the cPAD for females 13-49 years old. Based on the lack of residential uses, chronic residential exposure to residues of dimethomorph is not expected. In addition, there is potential for chronic dietary exposure to dimethomorph 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 Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHOMORPH

Population Subgroup	cPAD mg/kg/ day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.10	7	28.50	0.30	3,253
All infants (<1 year old)	0.10	0.8	28.50	0.30	960
Children (1-2 years old)	0.10	16	28.50	0.30	842
Females (13-49 years old)	0.10	6	28.50	0.30	2,812

2. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethomorph is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

3. *Aggregate cancer risk for U.S. population*. Dimethomorph is no carcinogenic. This classification was based upon lack of evidence of carcinogenicity in rats and mice. The Agency concludes that the pesticidal uses of dimethomorph are not likely to pose a cancer risk to humans.

4. *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 dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A reliable method for the determination of dimethomorph residues in fruiting vegetables crop group 8, leafy brassica greens subgroup 5B, taro leaves and roots exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex, Canadian or Mexican maximum residue limits or tolerances for dimethomorph in or on taro, corm; taro, leaves; brassica, leafy greens, subgroup 5B; or vegetable, fruiting, group 8.

V. Conclusion

Therefore, the tolerances are established for residues of dimethomorph, in or on brassica, leafy greens, subgroup 5B; taro, corm; taro, leaves; and vegetable, fruiting, group 8.

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 o ''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–2003–0303 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 November 28, 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–2003–0303, 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 tolerances 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 tolerances 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:September 22, 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 180.493 is amended by removing the entries ''tomato'' and ''tomato, paste'' and by alphabetically adding the following commodities to the table in paragraph (a) to read follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) * * *

Commodity	Parts per million
Brassica, leafy greens, subgroup 5B	20.0
* * * *	*
Taro, corm	0.5
Taro, leaves	6.0
* * * *	*
Vegetable, fruiting, group 8	1.5

* * * * *

[FR Doc. 03–24564 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0058; FRL–7327–9]

Glufosinate Ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of glufosinate ammonium and its metabolites in or on certain raw agricultural commodities. Aventis CropScience USA, now Bayer CropScience, and Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 29, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0058, must be received on or before November 28, 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: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: 703–305–6224; e-mail address: *miller.joanne@epamail.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 categories and 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. 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–2003–0058. 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 May 19, 2000 (65 FR 31904) (FRL–6558–2), 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 0F6140) by Aventis CropScience USA, now Bayer CropScience, PO Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of July 24, 2002 (67 FR 48465) (FRL–7184–6), 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 OF6210) by Aventis CropScience USA, now Bayer CropScience, PO Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. Comments on the petition were filed by Neil J. Carman, Ph.D. of the Sierra Club

Genetic Engineering Committee. A response to these comments is provided in Unit VI.

In the **Federal Register** of August 21, 2002 (67 FR 54196) (FRL–7190–9), 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 2E6404) by Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by IR-4, the petitioner. There were no comments received in response to the notice of filing.

In the **Federal Register** of August 15, 2003 (68 FR 48908) (FRL–7322–9), 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 amended pesticide petitions (PP 0F6140 and PP OF6210) by Bayer CropScience, PO Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer CropScience. Two hundred and sixty five comments were filed. A response to these comments is provided in Unit VI.

The petitions requested that 40 CFR 180.473(a)(1) be amended by establishing tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from cotton, undelinted seed at 3.5 parts per million (ppm) and gin byproducts at 12.0 ppm; and blueberry, lingonberry, juneberry and salal at 0.10 ppm and that 40 CFR 180.473(a)(2) be amended by establishing tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 3-methylphosphinico-propionic acid, and 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from transgenic cotton tolerant to glufosinate ammonium: undelinted seed at 3.5 ppm and gin byproducts at 12.0 ppm and transgenic rice tolerant to glufosinate ammonium: grain at 1.0 ppm, straw at 1.6 ppm.

IR-4 and Bayer CropScience subsequently amended the petitions to request that 40 CFR 180.473(a)(1) be amended by establishing tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the following food commodities: Bushberry subgroup, lingonberry, juneberry and salal at 0.15 ppm, cattle, fat at 0.40 ppm, cattle, meat at 0.15 ppm, cattle, meat byproducts at 6.0 ppm, cotton, gin byproducts at 15 ppm, cotton, undelinted seed at 4.0 ppm, egg at 0.15 ppm, goat, fat at 0.40 ppm, goat, meat at 0.15 ppm, goat, meat byproducts at 6.0 ppm, hog, fat at 0.40 ppm, hog, meat at 0.15 ppm, hog, meat byproducts at 6.0 ppm, horse, fat at 0.40 ppm, horse, meat at 0.15 ppm, horse, meat byproducts at 6.0 ppm, Milk at 0.15 ppm, poultry, fat at 0.15 ppm, poultry, meat at 0.15 ppm, poultry, meat byproducts 0.6 ppm, sheep, fat at 0.40 ppm, sheep, meat at 0.15 ppm, and sheep, meat byproducts at 6.0 ppm.

Bayer CropScience subsequently amended the petitions to request that 40 CFR 180.473(a)(2) be amended by establishing tolerances for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the following raw agricultural and processed commodities derived from transgenic cotton and rice that are tolerant to glufosinate ammonium: Cotton, gin byproducts at 15 ppm, cotton, undelinted seed at 4.0 ppm, rice, grain at 1.0 ppm, rice, straw at 2.0 ppm, and rice, hull at 2.0 ppm. These amendments were included in the August 15, 2003 notice of filing.

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 combined residues of glufosinate ammonium and its metabolites on bushberry subgroup, lingonberry, juneberry and salal at 0.15 ppm, cattle, fat at 0.40 ppm, cattle, meat at 0.15 ppm, cattle, meat byproducts at 6.0 ppm, cotton, gin byproducts at 15 ppm, cotton, undelinted seed at 4.0 ppm, egg at 0.15 ppm, goat, fat at 0.40 ppm, goat, meat at 0.15 ppm, goat, meat byproducts at 6.0 ppm, hog, fat at 0.40 ppm, hog, meat at 0.15 ppm, hog, meat byproducts at 6.0 ppm, horse, fat at 0.40 ppm, horse, meat at 0.15 ppm, horse, meat byproducts at 6.0 ppm, milk at 0.15 ppm, poultry, fat at 0.15 ppm, poultry, meat at 0.15 ppm, poultry, meat byproducts at 0.60 ppm, sheep, fat at 0.40 ppm, sheep, meat at 0.15 ppm, and sheep, meat byproducts at 6.0 ppm, cotton, gin byproducts at 15 ppm, rice, grain at 1.0 ppm, rice, straw at 2.0 ppm, and rice, hull at 2.0 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 glufosinate ammonium and its metabolites are discussed in Tables 1, 2 and 3 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.—GLUFOSIANTE-AMMONIUM: ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
81–1	Acute oral	LD_{50} = 4,010 mg/kg (milligram/kilogram) in males LD_{50} = 3,030 mg/kg in females
870.3100	90–Day oral toxicity in rats (males only)	NOAEL = 6.2–8.8 mg/kg/day in males LOAEL = 64–90 mg/kg/day in males, based on glutamine synthetase inhibition in the brains
870.3100	*N*-acetyl-L-glufosinate disodium 90–Day oral toxicity in rats (males only)	NOAEL = 65–90 mg/kg/day in males LOAEL = 657–935 mg/kg/day in males, based on glutamine synthetase inhibition in the brains
870.3100	90–Day oral toxicity in mouse	NOAEL = 48 mg/kg/day in males, 192 mg/kg/day in females Highest Dose Tested (HDT) LOAEL = 192 mg/kg/day in males based on the changes in clinical biochemistry and liver weights in males
870.3200	21/28–Day dermal toxicity in rat	NOAEL = 100 mg/kg/day LOAEL = 300 mg/kg/day based on clinical observations (aggressive behavior, piloerection, and a high startle response)
870.3700	Prenatal developmental in rats (three studies combined)	Maternal: NOAEL = 10 mg/kg/day LOAEL = 50 mg/kg/day based on vaginal bleeding and hyperactivity Developmental: NOAEL = 50 mg/kg/day LOAEL =250 mg/kg/day based on dilated renal pelvis
870.3700	Prenatal developmental in rabbit	Maternal: NOAEL = 6.3 mg/kg/day LOAEL = 20.0 mg/kg/day based on reduced food consumption, body weight and weight gains Developmental: NOAEL = 6.3 mg/kg/day LOAEL = 20.0 based on decreased body weights and fetal death
870.3800	Reproduction and fertility effects in rat	Parental/Systemic NOAEL = 18.0 mg/kg/day (HDT) LOAEL = not established Reproductive NOAEL = 6.0 mg/kg/day LOAEL = 18.0 mg/kg/day based on decreased number of viable pups Offspring NOAEL = 6.0 mg/kg/day LOAEL = 18.0 mg/kg/day based on decreased number of viable pups
870.4100	Chronic toxicity in dogs	NOAEL = 5.0 mg/kg/day LOAEL = 8.5 mg/kg/day based on mortality (week 2) and alterations in the electrocardiogram at 6 months
870.4200	Carcinogenicity in rats	NOAEL = 45.4 mg/kg/day in males, 57.1 mg/kg/day in females LOAEL = 228.9 mg/kg/day in males and 281.5 based on increased incidences of retinal atrophy. No evidence of carcinogenicity
870.4300	Chronic Feeding / Carcinogenicity in rats	NOAEL = 24.4 mg/kg/day in males, 8.2 mg/kg/day in females LOAEL = not achieved in males and 28.7 based on inhibition of brain glutamate synthetase in females at 130 weeks No evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 10.82 mg/kg/day in males, 16.19 mg/kg/day in females LOAEL = 22.60 mg/kg/day in males, 63.96 mg/kg/day in females based on increased mortality and glucose levels and consistent changes in glutathione levels in males, increased glucose levels and decreased albumin and total proteins No evidence of carcinogenicity
870.5265	Reverse Mutation Assay	Glufosinate ammonium failed to cause reverse mutations in bacteria with and without metabolic activation.
870.5300	Detection of gene mutations in somatic cells in culture	Glufosinate ammonium did not increase the mutation frequency at the thymidine kinase locus
870.5395	*In vivo* mammalian cytogenetic tests	The results indicated glufosinate ammonium had no effect on micronucleus formation

TABLE 1.—GLUFOSIANTE-AMMONIUM: ACUTE, SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5500	Bacterial DNA damage or repair test	glufosinate ammonium failed to cause damage to DNA that could be detected by this repair assay
870.5550	Unscheduled DNA synthesis in mammalian cells in culture	There was no evidence that unscheduled DNA synthesis was induced by glufosinate ammonium.
870.6200	Acute neurotoxicity in rat (2 studies)	NOAEL = 500 mg/kg in males and females (HDT) LOAEL = Not established in both sexes
870.6200	Repeat Dose Neurotoxicity in rat	NOAEL = 1.5 mg/kg/day in males, 1.8 mg/kg/day in females LOAEL = 14.9 mg/kg/day in males, 17.1 mg/kg/day in females, based on the inhibition of glutamate synthetase in the brain
870.7485	Metabolism and pharmacokinetics in rat	The majority of the radioactivity (95–98% of the dose) was eliminated during the first 24 hrs after dosing. The parent compound, glufosinate ammonium, accounted for most of the eliminated radioactivity in the urine and feces of both males (80% of the dose) and females (73% of the dose). The metabolite, 3-methylphosphinico-propionic acid, was consistently found in both urine and feces of both sexes.
870.7485	Metabolism and pharmacokinetics in rat	The majority of the radioactivity was eliminated during the first 24 to 48 hrs after dosing. The parent compound, glufosinate ammonium, accounted for the majority of the radioactivity eliminated in the excreta of both males (≈80% of the dose) and females (88% of the dose). The metabolite, 3-methylphosphinico-propionic acid, was consistently found in both urine (0.22–1.20% of the dose) and feces (0.44–1.36% of the dose) of both sexes. 2-acetamido-4-methylphosphinico-butanoic acid was found in feces (0.28–1.72% of the dose) of both male and female rats and barely above or at the level of the detection in the urine of both sexes (0.02–0.04% of the dose). Very little if any of administered glufosinate ammonium was sequestered in any tissues examined.
870.7485	Metabolism and pharmacokinetics in rat	The major route of excretion was via feces (88% and 84% of the administered radioactivity for males and females, respectively). Within 7 days of post dosing, greater than 94% of the dose was eliminated. Kinetics analysis indicated that the process of excretion was a two-phase process. The tissue radioactivity level for kidneys, liver and gonads was just above the background level.
870.7485	Metabolism and pharmacokinetics in rat	The majority of the radioactivity was excreted within 24 hrs after the last dose. The major route of elimination was via feces. There was also a two-phased elimination process. More radioactivity was found in the tissues of animals dosed repeatedly than that of animals receiving a single dose.
870.7600	Dermal penetration	The results indicate that at the low dose (0.1 mg) 42.5 to 50.8% of the applied radioactivity was absorbed whereas at the high dose (10 mg) 26% was absorbed. After removal and washing of the treated skin a substantial amount of the radioactivity still remained in the skin, and it was gradually absorbed and eliminated. Radioactivity was found in both feces and urine samples, but the majority of glufosinate ammonium was eliminated in the urine. In all organs/tissues examined, radioactivity was found to reach a maximum level either at 4 or 10 hrs after exposure. Subsequently, the radioactivity dropped rapidly. The amount of radioactivity found in the brain was very minimal relative to that of kidneys and liver.

TABLE 2.—3-METHYLPHOSPHINICO-PROPIONIC ACID: SUBCHRONIC TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day dermal toxicity in rats	NOAEL = 102 mg/kg/day in males, 113 mg/kg/day in females LOAEL = 420 mg/kg/day in males, 439 mg/kg/day in females based on increased reticulocytes and increased absolute and relative liver weights in males
870.3100	90–Day dermal toxicity in mice	NOAEL = 1,121 mg/kg/day in males, 1,340 mg/kg/day in females LOAEL = Not established

TABLE 2.—3-METHYLPHOSPHINICO-PROPIONIC ACID: SUBCHRONIC TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in rodents in rats	Maternal: NOAEL = 300 mg/kg/day Maternal: LOAEL = 900 mg/kg/day based on one death and clinical findings (persistent piloerection and/or increased urinary output) Developmental: NOAEL = 300 mg/kg/day Developmental: LOAEL = 900 mg/kg/day based on increases in the incidences of total litter loss and in the fetal and litter incidences of wavy and/or thickened ribs.
870.3700	Prenatal developmental in rabbits	Maternal: NOAEL = 50 mg/kg/day Maternal: LOAEL = 100 mg/kg/day based on increased abortions, mortality, and reductions in food and water consumption, body weight gain, and fecal output Developmental: NOAEL = 200 mg/kg/day Developmental: LOAEL = Not observed

TABLE 3.—METABOLITE, 2-ACETOMIDO-4-METHYLPHOSPHINICO-BUTANOIC: SUBCHRONIC AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents in rats	NOAEL = 147 mg/kg/day in males, 162 mg/kg/day in females LOAEL = 738 mg/kg/day in males, 800 mg/kg/day in females based on glutamine synthetase inhibition in the brain
870.3100	90–Day oral toxicity rodents in mice	NOAEL = Not established for males, 110 mg/kg/day in females LOAEL = 83 mg/kg/day in males, 436 mg/kg/day in females based on glutamine synthetase inhibition in the brain
870.3150	Subchronic Nonrodent Oral Toxicity in dogs	NOAEL = 19 mg/kg/day in males, 21 mg/kg/day in females LOAEL = 72 mg/kg/day in males, 79 mg/kg/day in females based on glutamine synthetase inhibition in the brain
870.3700	Prenatal developmental in rodents-rat	Maternal: NOAEL = 1,000 mg/kg/day Maternal: LOAEL = Not observed Developmental: NOAEL = 1,000 mg/kg/day Developmental: LOAEL = Not observed
870.3700	Prenatal developmental in rabbits	Maternal: NOAEL = 64 mg/kg/day Maternal: LOAEL = 160 mg/kg/day based on reduced feed consumption Developmental: NOAEL = 64 mg/kg/day Developmental: LOAEL = 160 based on uni- or bilateral extra at the 13th thoracic vertebra
870.6200	Acute Neurotoxicity in rats	NOAEL = 1,000 mg/kg in males and females LOAEL = 2,000 mg/kg in males and females based on clinical signs of toxicity including sedation, ruffled fur, and diarrhea
870.6200	Acute Neurotoxicity in rats	NOAEL = 100 mg/kg in males and females LOAEL = 1,000 mg/kg in males and females based on decreased body weight gain
870.6200	Repeat Dose Neurotoxicity in rats	NOAEL = 158.9 mg/kg/day in males, 179.4 mg/kg/day in females LOAEL = Not established in males and females

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 intraspecies differences. A 10x data base uncertainty factor, due to the lack of a developmental neurotoxicity study, was applied to all dietary and residential dermal, inhalation, and incidental oral exposure assessments. For residential inhalation exposure assessments an additional 10x data base uncertainty factor was applied due to the lack of an adequate inhalation study and high concern for exposure via the inhalation route (10,000). Agency policy limits the total uncertainty factor applied for any particular chemical to no more than 3,000 (see EPA report ''A Review of the Reference Dose and Reference Concentration Processes:'' EPA/630/P–02/022F, December 2002; a Notice of Availability of the Final Report was published in the **Federal Register** of

May 21, 2003 (68 FR 27805) (FRL–7501–8).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for glufosinate ammonium and its metabolite used for human risk assessment is shown in Table 4 of this unit:

TABLE 4.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR GLUFOSINATE AMMONIUM AND ITS METABOLITES 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 = 6.3 mg/kg/day UF = 1,000 Acute RfD = 0.0063 mg/kg/day.	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.0063 mg/kg/day.	Prenatal Developmental Toxicity Study in non-rodents - rabbit LOAEL = 20.0 mg/kg/day based on decreased body weights and fetal death
Chronic Dietary (All populations)	NOAEL = 6.0 mg/kg/day UF = 1,000 Chronic RfD = 0.006 mg/kg/day.	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.006 mg/kg/day	''Weight-of-evidence'' approach from several studies; NOAEL = 6.0 mg/kg/day; brain glutamine synthetase inhibition and alterations in the electrocardiogram.
Short-Term Dermal (1 to 30 days) (Residential)	Oral study NOAEL = 6.3 mg/kg/day (dermal absorption rate = 50%)	LOC for MOE = 1,000 (Residential)	Prenatal Developmental Toxicity Study in non-rodents - rabbits LOAEL = 20 mg/kg/day based on reduced fetal body weights, increased fetal mortality, reduced food consumption, body weight, and body weight gain
Short-Term Inhalation (1 to 30 days) (Residential)	Oral study NOAEL = 6.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 3,000 (Residential)	Prenatal Developmental Toxicity Study in non-rodents - rabbits LOAEL = 20 mg/kg/day based on reduced fetal body weights, increased fetal mortality, reduced food consumption, body weight, and body weight gain

*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 180.473) for the combined residues of glufosinate ammonium and its metabolites, in or on almond hulls, apples, bananas, meat, milk, fat, meat byproducts, eggs, grapes, potatoes, tree nuts and food commodities derived from transgenic canola, transgenic field corn, transgenic soybean and transgenic sugar beets. Risk assessments were conducted by EPA to assess dietary exposures from combined residues of glufosinate ammonium and its metabolites 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. The Dietary Exposure Evaluation Model-Food Consumption Intake Database (DEEM-FCID®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% crop treated for all registered and proposed commodities (Tier 1 analysis) and, depending on the level of blending of a commodity, tolerance level residues, highest field trial, or average field trial.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM-FCID® analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated for all registered and proposed commodities (Tier 1 analysis) excluding apple, canola, corn and grape, where 3 year weighted average percent crop treated was used, and, depending

on the level of blending of a commodity, tolerance level residues or average field trial.

iii. *Cancer*. No evidence of carcinogenicity at doses tested were observed in the mouse and rat carcinogenicity studies. A quantitative cancer risk assessment was not performed for glufosinate ammonium.

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.

The Agency believes that the three conditions listed in Unit IV. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 3 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. 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 glufosinate ammonium 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 glufosinate ammonium in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glufosinate ammonium. Based on environmental fate data the residues of concern in drinking water are glufosinate ammonium, 3-methylphosphinico-propionic acid, 2-methylphosphinico-acetic acid and *N*-acetyl-glufosinate.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The 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. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to glufosinate ammonium they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM-EXAMS and SCI-GROW models the EECs of glufosinate ammonium and its degradates for acute exposures are estimated to be 94 µg/liter for surface water and 9 µg/liter for ground water. The EECs for chronic exposures are estimated to be 43 µg/liter for surface water and 9 µg/liter for ground water.

3. 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).

Glufosinate ammonium is currently registered for use on the following residential non-dietary sites: Home use for spot treatment of weeds, grass, bushes and vines. The risk assessment was conducted using the following residential exposure assumptions: Application rate of 0.0312 lb active ingredient (ai) per 1,000 ft^2, dermal unit exposure of 11 mg/lb and inhalation exposure of 0.016 mg/lb from hose end application and dermal unit exposure of 56 mg/lb and inhalation exposure of 0.0065 mg/lb from low pressure hand wand application.

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 glufosinate ammonium has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding for glufosinate ammonium and any other substances and glufosinate ammonium 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 glufosinate ammonium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The studies examining prenatal and postnatal toxicity showed:

a. No quantitative or qualitative evidence of increased susceptibility following *in utero* exposure in the prenatal developmental study in rats.

b. Qualitative evidence of increased susceptibility in the prenatal developmental study in rabbits and quantitative evidence of increased susceptibility in the 2-generation reproduction study in rats. In this study, a decrease in the number of viable pups was observed in the absence of parental toxicity at any dose.

Since there is qualitative evidence of increased susceptibility of the young following exposure to glufosinate ammonium, EPA performed a degree of concern analysis to: Determine the level of concern for the effects observed when considered in the context of all available toxicity data; and identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. In the rabbit developmental study the degree of concern observed as low noting that the fetal effects of concern occurred only at the highest dose tested and that a clear NOAEL for effects was established. In the 2-generation reproduction study the degree of concern for the effects observed as low noting that clear NOAELs and LOAELs were identified for the offspring effects of concern and the dose-response well-characterized.

3. *Conclusion*. There is not an adequate toxicity data base for glufosinate ammonium and its metabolites although the exposure data are complete or are estimated based on data that reasonably account for potential exposures. EPA identified the following data gaps:

a. Acute neurotoxicity study conducted in the rat which includes glutamine synthetase activity measurement in the liver, kidneys, and brain.

b. A developmental neurotoxicity (DNT) study conducted in the rat which includes comparative glutamine synthetase activity measurement in the liver, kidneys, and brain of the pups and mothers.

c. A 28–day inhalation toxicity study in rats with glutamine synthetase activity measurements in brain, kidney, liver and lung.

EPA is also requesting additional data to confirm that liver and kidney changes, observed in the absence of histopathological changes, are an adaptive response and not an adverse effect. These studies are required because the glutamine synthetase measurements are not available in young and adult animals. Therefore, EPA has applied additional data base uncertainty factors in this risk assessment. The results of these studies are expected to eliminate any uncertainty that may be associated in characterizing the toxicity of glufosinate ammonium.

For dietary risk assessment, an FQPA additional 10X safety factor, retained as a data base uncertainty factor due to the lack of a developmental neurotoxicity (DNT) study that measures glutamine synthetase activity in the young and adult animals, was applied to all dietary and residential dermal, inhalation, and incidental oral exposure assessments. For residential inhalation exposure assessments an additional 10x data base uncertainty factor was applied due to the lack of an adequate inhalation study and high concern for exposure via the inhalation route with a total uncertainty factor of 3,000 applied based on EPA policy cited in Unit III.B.

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 glufosinate ammonium will occupy 48% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to glufosinate ammonium in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and groundwater, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO GLUFOSINATE AMMONIUM

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (µg/liter)	Ground Water EEC (µg/liter)	Acute DWLOC (µg/liter)
Females (13–50 years old)	0.0063	48	94	9	98

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to glufosinate ammonium from food will utilize 10% of the cPAD for the U.S. population, 20% of the cPAD for all infants and 27% of the cPAD for children (1–2 years old). Based on the use pattern, chronic residential exposure to residues of glufosinate ammonium is not expected. In addition, there is potential for chronic dietary exposure to glufosinate ammonium in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and groundwater, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 6 of this unit:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLUFOSINATE AMMONIUM

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (µg/liter)	Ground Water EEC (µg/liter)	Chronic DWLOC (µg/liter)
U.S. Population	0.006	10	43	9	189
Youth (13–19 years old)	0.006	9	43	9	164
Females (13–50 years old)	0.006	7	43	9	167
Adults (20–49)	0.006	8	43	9	194

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).

Glufosinate ammonium 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.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate risk index (ARI) of 5.42 for the U.S. population, 6.35 for females (13–49 years old) and 5.75 for youth (13–19 years old). The registered spot treatment of weeds is expected to result in residential exposure only to adults. Therefore, short-term aggregate assessments were not conducted for infants and children. These aggregate ARIs do not exceed the Agency's level of concern of less than 1 for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of glufosinate ammonium in groundwater 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 Table 7 of this unit:

TABLE 7.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO GLUFOSINATE AMMONIUM

Population Subgroup	Aggregate ARI[1] (Food + Residential)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	5.42	43	9	180
Females (13–49 years old)	6.35	43	9	159
Youths (13–19 years old)	5.75	43	9	156

[1] $ARI = MOE_{calculated\ (i.e., food, dermal, inhalation)} \div MOE_{acceptable}$

4. *Aggregate cancer risk for U.S. population*. No evidence of carcinogenicity at doses tested were observed in the mouse and rat carcinogenicity studies. Therefore, no cancer risk is expected.

5. *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 glufosinate ammonium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

Codex and Mexico do not have maximum residue limits (MRLs) for glufosinate ammonium and its metabolites for the proposed crops or livestock commodities. Canada does not have MRLs for glufosinate ammonium and its metabolites for the proposed crops, poultry commodities or milk, but does have a MRL of 1 ppm for ruminant liver and kidney.

V. Conclusion

Therefore, the tolerance is established for combined residues of glufosinate ammonium and its metabolites in or on bushberry subgroup, Lingonberry, juneberry and salal at 0.15 ppm, cattle, fat at 0.40 ppm, cattle, meat at 0.15 ppm, cattle, meat byproducts at 6.0 ppm, cotton, gin byproducts at 15 ppm, cotton, undelinted seed at 4.0 ppm, egg at 0.15 ppm, goat, fat at 0.40 ppm, goat, meat at 0.15 ppm, goat, meat byproducts at 6.0 ppm, hog, fat at 0.40 ppm, hog, meat at 0.15 ppm, hog, meat byproducts at 6.0 ppm, horse, fat at 0.40 ppm, horse, meat at 0.15 ppm, horse, meat byproducts 6.0 ppm, Milk at 0.15 ppm, poultry, fat at 0.15 ppm, poultry, meat at 0.15 ppm, poultry, meat byproducts 0.60 ppm, sheep, fat at 0.40 ppm, sheep, meat at 0.15 ppm, and sheep, meat byproducts 6.0 ppm, cotton, gin byproducts at 15 ppm, rice, grain at 1.0 ppm, rice, straw at 2.0 ppm, and rice, hull at 2.0 ppm.

VI. Response to Comments

The overall thrust of the comments from the Sierra Club was that ''large quantities of glufosinate ammonium herbicide will be utilized on transgenic rice crops in the United States and abroad . . . even though the herbicide may have side effects on humans, farm animals and beneficial insects.'' The testing of pesticides will often reveal that a pesticide has the potential to create adverse effects in animals and/or insects; those risks are addressed via registration under FIFRA. The critical issue addressed by FFDCA is whether there is an adequate margin of safety between the aggregate exposure level of humans to the pesticide and the level that potentially may be harmful. As EPA described in Unit III.E. above, EPA's risk assessment showed that an adequate margin was available for EPA to conclude that there is a reasonable certainty of no harm for the general population including infants and children.

EPA has reprinted each of Sierra Club's more specific comments below and responded to each individually.

1. *Comment—plant metabolism of glufosinate.* A concern is other plant metabolites of glufosinate ammonium may occur in addition to the two primary metabolites identified in the grain and straw, since the two substances did not appear to account for 100% of the total radioactive residues in the two plant tissues tested. While more than 80% appeared to be accounted for, Aventis needs to identify whether additional metabolites were produced. The two primary metabolites identified as being typical of plant metabolism in the grain at harvest were 3-methylphosphinicopropionic acid, being—70% of the total radioactive residues (TRR). Another residue in the grain was *N*-acetyl-L-glufosinate (2-acetamido-4-methylphosphinicobutanoic acid), at about 11% of the TRR and parent at 5–6% of the TRR. In the straw, 3-methylphosphinicopropionic acid was the major metabolite comprising approximately 60% of the TRR. Lesser amounts of the parent (about 17% of the TRR) and *N*-acetylglufosinate (10–13% of TRR) were found in the straw fraction.

Agency response. The transgenic rice metabolism study was conducted according to the regulatory guideline requirements (OPPTS 860.1500) and conformed to EPA Good Laboratory Practice (GLP) Standards (the % TRR figures given below are averages of four samples). The study indicated that glufosinate ammonium, *N*-acetyl-glufosinate, and 3-MP accounted for 88% and 91% of the total radioactive residue (TRR) found in rice grain and rice straw, respectively (grain and straw are the only rice raw agricultural commodities (RACs)). The remainder of the radioactivity was identified as 2-methylphosphinico-acetic acid (grain—1% TRR; straw—2% TRR), several unknowns when combined accounted for 2% TRR (rice grain) and 3% TRR (rice straw), and fiber bound residues (grain—8% TRR; straw—5% TRR). The petitioner identified/characterized 99% and 101% of the TRR in rice grain and rice straw, respectively. In previously submitted transgenic canola and non-transgenic apple, corn, lettuce, soybeans, and wheat metabolism studies, the petitioner demonstrated the incorporation of radioactivity into nature plant constituents. On the basis of the transgenic rice metabolism study and the previously submitted metabolism studies, EPA concluded that the residue identification/characterization procedures performed were adequate and the residues of concern in transgenic rice, for purposes of tolerance enforcement and risk assessment, are glufosinate ammonium, *N*-acetyl-glufosinate, and 3-methylphosphinico-propionic acid (3-MP).

2. *Comment—analytical method.* We ask EPA if any independent sampling and gas chromatography analyses were conducted besides that performed by Aventis and its contractors. We request that an independent sampling and G.C. analysis program be carried out if Aventis has not had a third party independent contractor, since we are skeptical of Aventis' sampling data and analyses. We generally agree that the enforcement analytical method of utilizing gas chromatography appears to be acceptable for detecting and measuring levels of glufosinate ammonium and metabolites with a general limit of quantification of 0.05 ppm to allow detection of glufosinate residues at or above the proposed tolerances. We wonder if glufosinate residues might have been found between 0.01 ppm and 0.05 ppm, and that due to its toxicity, EPA should have required a lower detectability limit be utilized to demonstrate if glufosinate residues were missed below 0.05 ppm or 50 parts per billion (ppb) concentration down to 1 ppb.

Agency response. The rice magnitude of the residue study was conducted according to the regulatory guideline requirements (OPPTS 860.1500) and conformed to EPA GLP Standards. The rice grain and straw samples were analyzed using a method similar to that previously validated by an independent laboratory and by the EPA. Based on these validation procedures and the validation and concurrent recovery data submitted with the transgenic rice field trials, EPA concluded that the method was appropriate for data collection purposes.

EPA understands that residues below the level of quantification (< LOQ) does not mean that residues are not present. The dietary analyses assumed average field trial residues for rice commodities. When calculating the average, half LOQ residues were assumed for residues < LOQ. Therefore, the dietary risk assessment took into account the possibility of residues between 0.01 and

0.05 ppm. For further information on EPA's rationale for assuming half LOQ residues see ''Values to Non-Detectable/Non-Quantifiable Residues in Human Health Food Exposure Assessments'' (faxed upon request; telephone: (202) 401–0527; item: 6047).

3. *Comment—magnitude of glufosinate residues.* The reason that we are requesting independent sampling and gas chromatography analyses be conducted besides that performed by Aventis and its contractors is the potential for higher glufosinate residue concentrations to be confirmed above the 0.74 ppm level in rice grain and 1.48 ppm level in rice straw when sampled at 70 days or more after the last treatment. We are concerned that Aventis' sampling protocol may have been biased in some unidentified manner and that samples above the 0.74 ppm level in rice grain and 1.48 ppm level in rice straw were missed in the field residue trials. While EPA emphasizes that the treatment regime was selected to represent the use pattern that is the most likely to result in the highest residues, we are concerned that sampling bias may have transpired and resulted in bias in the G.C. analyses. We are also concerned that glufosinate treatment may have occurred closer to the sampling period than is the case and higher glufosinate concentrations were missed. After all, a higher concentration factor of approximately 2.3 was found for rice hulls compared to the grain and straw. We also question that the finding that no detectable concentration of the residues occurred when rice whole grain was processed into polished grain and bran, whereas a glufosinate residue concentration may have been present at less than the 0.05 ppm (50 ppb) detection limit.

Agency response. The rice magnitude of the residue (15 field trials conducted throughout the rice growing regions in the United States; 2 composite samples collected at each site) and processing studies were conducted according to the regulatory guideline requirements (OPPTS 860.1500 and 860.1520) and conformed to EPA GLP Standards. It is difficult to further address the potential for bias since the comment gave no specific criteria for the concern. The comment does make reference to the processing study and the concentration of residues in rice hull and the lack of concentration of residues in rice bran and polished rice. The following paragraph is a summary of the rice processing study.

Processing studies are required to determine if residues reduce or concentrate during food processing (processing factor = concentration in processed commodity ÷ concentration in unprocessed commodity). Processing factors are dependent on several factors including the location of the residues (surface or translocated residues), loss of water as in dried commodities, and/or the physical chemical properties of the residues. The rice processing study (conducted at 5x the proposed rate) resulted in quantifiable concentrations of glufosinate ammonium, *N*-acetyl-glufosinate, and 3-MP in/on all commodities excluding glufosinate ammonium and *N*-acetyl-glufosinate in/on rice hull (residues at the LOQ assumed for calculation of processing factor). Based on the combined glufosinate ammonium, *N*-acetyl-glufosinate, and 3-MP residues in/on the processed and unprocessed commodities, the following processing factors were calculated: rice hull—2.8x, rice bran—0.9x, and polished rice—1.3x. The dietary analyses assumed average field trial residues and a processing factor of 1.3 for all rice commodities excluding rice bran where a processing factor of 0.9 was assumed (rice hull is not a human food commodity).

4. *Comment—acute toxicity.* EPA states that glufosinate ammonium has been classified as toxicity category III for acute oral, dermal, and inhalation toxicity; and for eye irritation. EPA finds that glufosinate ammonium is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral LD_{50} is 2 g/kg in male rats, and 1.62 g/kg in female rats. But we are concerned about acute toxicity because of the published finding that glufosinate causes convulsions in humans and experimental rodents by brain cell glutamate receptor activation (glufosinate and glutamate are structurally similar) according to Matsumura et al. Has EPA considered the structural similarities between glufosinate and glutamate receptor activation. We request that EPA review all of the relevant toxicological literature on human and rat brain cell glutamate receptor activation and speak with scientists who performed this research as to the significance of glufosinate tampering with glutamate receptors. Evidence also exists that glufosinate stimulates nitric oxide production in the brain through *N*-methyDaspartate (NMDA) receptors. We request that EPA investigate this published finding to determine if the requested herbicide tolerance concentrations are set too high which, is a possibility.

Agency response. EPA has evaluated both the published and petitioner submitted toxicity studies. The oral, dermal, and inhalation toxicity categories assigned by EPA are based on studies conducted according to the EPA toxicity testing guidelines and were conducted in compliance with EPA GLP. In an acute oral toxicity study in rats, the oral LD_{50} was found to be 1,620 and 2,000 mg/kg/day in female and male rats, respectively. In this study, no effects were seen in rats at doses up to 630 mg/kg/day.

The commenter cites two acute exposure studies. Matsumura et al. have shown that an acute dose of 80 mg/kg injected intraperitoneally into mice was convulsive and that this effect was partially antagonized by NMDA antagonists, suggesting that NMDA receptors may mediate this effect. Nakaki et al. found that injection of glufosinate ammonium directly into the brain stimulated nitric oxide production as a result of stimulation of NMDA receptors in rat brain, another neurochemical effect. But neither of these published studies provide sufficient appropriate evidence to establish an acute endpoint for risk assessment from oral, dermal, or inhalation exposures because the routes that they used, intraperitoneal injection or direct injection into the brain, are not directly relevant to potential routes of human exposure to pesticides, i.e., oral, dermal, or inhalation exposure.

The herbicidal mechanism of action of glufosinate ammonium is inhibition of the enzyme glutamine synthetase. This enzyme is also present in mammalian systems. In mammals, glutamine synthetase facilitates the conversion of glutamate and ammonia to glutamine and is therefore involved in the metabolism of nitrogen and ammonia. In addition, glutamate is a major excitatory neurotransmitter in the nervous system; inhibition of glutamine synthetase has been shown to impair its ability to serve as a neuroprotectant by controlling glutamate concentrations in neurons. More generally in the body, ammonia is buffered for extracellular transport through its interaction with glutamate to form glutamine by glutamine synthetase.

EPA also reviewed mechanistic studies submitted by the petitioner as well as the published studies, and, where applicable and appropriate, incorporated findings from these studies in the human health risk assessment. In fact, the intermediate-term and long-term incidental oral endpoints and the chronic dietary endpoint are based on brain glutamine synthetase inhibition, the most sensitive indicator of glufosinate ammonium toxicity in humans and experimental animals.

After reviewing all of the submitted data, EPA confirms that the tolerances, as proposed, are safe.

5. *Comment—genotoxicity.* EPA claims that ... based on results of a complete genotoxicity data base, there is no evidence of mutagenic activity in a battery of studies, including: *Salmonella spp., E. coli, in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays. EPA needs to inquire with the FDA, USDA, ATSDR, medical doctors and scientists as to whether there are reports of glufosinate induced mutations and gene toxicity which appear to be glossed over in the Aventis petition.

Agency response. Glufosinate ammonium was clearly negative in the acceptable guideline mutagenicity studies. The test battery included: a *Salmonella typhimurium* and *Escherichia coli* reverse gene mutation assay, *in vitro* mammalian cell gene mutation and chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assay and an *in vitro* unscheduled DNA synthesis assay. All studies were performed in accordance with the specified Office of Prevention, Pesticides, and Toxic Substances (OPPTS) Harmonized Mutagenicity Test Guidelines Series 870 and satisfied the testing requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), and the Organization for Economic Cooperation and Development (OECD). Further, each study meets the requirement of 40 CFR part 160, Good Laboratory Practice (GLP) and was subjected to a Quality Assurance(QA) inspection. Based on the negative responses observed in these assays, EPA concluded that there is no concern for mutagenicity from exposure to glufosinate ammonium. In addition, no evidence of carcinogenicity was observed in mice and rats in acceptable guideline carcinogenicity studies. As indicated previously, EPA evaluated both petitioner submitted guideline studies and published scientific studies. In addition, the petitioner is required by law under FIFRA (6)(a)2) to report any adverse finding to EPA.

No mutagenicity studies were found in the open literature and the Agency for Toxic Substances and Disease Registry (ATSDR) has no finalized, draft, or ''under development'' toxicological profile for glufosinate ammonium. Finally, FDA has evaluated the human safety of multiple crops with resistance to glufosinate ammonium and has no concerns for human safety but has no mutagenicity or toxicity data in the Biotechnology Notification Files on this herbicide.

6. *Comment—reproductive and developmental toxicity.* We are skeptical of EPA's findings because, based on peer-reviewed studies in the published literature, birth defects have been caused by exposure of the human father to the herbicide. EPA needs to thoroughly investigate these findings and reconsider the glufosinate herbicide tolerance limits requested by Aventis as entirely unsafe and unacceptably high. It is rather distressing to note that there does not seem to be peer reviewed studies on the metabolism of the high levels of acetyl glufosinate in harvested GM crops to highly neurotoxic and teratogenic glufosinate. Certainly, gut bacteria are well known to contain enzymes that remove acetyl groups from glufosinate and mammalian enzymes may also be capable of removing the acetyl group from glufosinate. Even though glufosinate is being used widely with GM crops in North America its safety is far from proven and its impact on humans and farm animals is difficult to trace because the GM products are not labeled for consumption. We request that EPA obtain more technical data and information to better define the neurotoxicity and teratogenicity of glufosinate and its metabolites, especially in humans. Glufosinate, for example, was found to trigger apoptosis (programmed cell suicide) in the developing brain of the embryonic mouse. Numerous, well established studies showing brain damage and birth defects seem to have been ignored by those regulating use of the herbicide. We request that the EPA conduct a more comprehensive investigation of available literature on glufosinate and make requests for unpublished information from independent scientists such as their expert opinions on the adverse health effects of glufosinate and its metabolites.

We request the same under subchronic, chronic, animal metabolism, and metabolite toxicology as requested for Reproductive and Developmental toxicity.

Agency response. The study authors (cited study by Garcia et al) state in their conclusion that ''these findings warrant further investigation.'' In this study, only 16 individuals out of 261 referenced glufosinate ammonium. The results of this study indicated that there was a marginally significant increased risk of paternally related developmental toxicity. However, in this study various contributing factors such as smoking, work habits etc. were not evaluated and therefore, this epidemiological evaluation does not establish a causal definitive link to paternally related developmental toxicity. The potential for glufosinate ammonium to cause developmental or reproductive effects due to exposure (male or female) has been evaluated in acceptable guideline studies in rats and rabbits. Based on these studies, glufosinate ammonium is not teratogenic in rats and rabbits.

The petitioner has submitted acute, subchronic, chronic, developmental, and reproductive toxicity studies conducted with glufosinate ammonium. The petitioner has also submitted developmental toxicity studies (rat and rabbit) and subchronic studies (rat, mouse, and dog) with *N*-acetyl-glufosinate and 3-MP. All of these studies were conducted according to the regulatory guideline requirements (OPPTS 870 series) and conformed to EPA GLP Standards. EPA has reviewed all of these studies and selected the most sensitive endpoints. Based on a comparison of the common studies conducted with the parent and metabolites, the metabolites exhibited toxic effects at doses equal to or greater than the parent and EPA concluded that *N*-acetyl-glufosinate and 3-MP are not likely to be more toxic than glufosinate ammonium. In regards to the enzyme that can remove acetyl groups from substrates, these enzymes are present in the toxicology test systems used to evaluate the parent and metabolites.

In the cited study by Watanabe, mouse embryo cultures were exposed to glufosinate ammonium. This is an *in vitro* experiments which indicate apoptosis in the developing brain of cultured mouse embryos. It should be noted that apoptosis is a normal part of the brain development process. This experiments did not use whole animals and the current scientific knowledge is not sufficient to allow extrapolation of *in vitro* results to whole animals.

7. *Comment—endocrine disruption.* We find EPA's statements on the potential of glufosinate to function as an endocrine-disrupting substance in humans and animals as not founded on logical information or peer-reviewed studies. In fact EPA states that no special studies have been conducted to investigate the potential of glufosinate ammonium to induce estrogenic or other endocrine effects. Given the enormous complexities of mammalian hormonal regulatory systems and the current uncertainties existing in this field of knowledge as revealed by EPA's Endocrine Disruptor Advisory Committee several years ago about how to screen for potential endocrine-disrupting substances, we feel it's totally premature for EPA at this time to dismiss all concerns about glufosinate

as an endocrine-disrupting substance. EPA stresses that no evidence of estrogenic or other endocrine effects have been noted in any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely. Due to the millions of Americans and their children exposed to glufosinate and its metabolites, EPA needs to conclusively determine if this herbicide has endocrine-disrupting potential.

Agency response. EPA is required under the FFDCA, as amended by the FQPA, to develop a screening program to determine whether certain substances, including all pesticide active and other ingredients, ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific bases for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA has authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, glufosinate ammonium may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption. The studies submitted as guideline studies as well as the data reviewed in the open literature did not provide any obvious indications that glufosinate ammonium and/or its metabolites have specific endocrine disruptive effects.

8. *Comment—dietary exposure.* EPA states that tolerances have been established (40 CFR 180.473) for the combined residues of glufosinate ammonium and metabolites in or on a variety of RACs. EPA further maintains that no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. This is why EPA has not established an acute RfD for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. Therefore, an acute dietary analysis was conducted for this sub-population; whereas, chronic dietary analysis was conducted for the usual populations. We request that EPA reconsider and reevaluate the health information finding that no appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies as too being limited and erroneous.

Agency response. EPA has evaluated the published toxicity studies and considered the relevant petitioner submitted studies. On the basis of these studies, no appropriate endpoint of concern attributable to a single exposure was identified. EPA has asked the petitioner to conduct a study to evaluate potential effects of glufosinate ammonium following a single exposure (acute effects) with glutamate synthetase measurements. Until such data are available, EPA has applied additional data base UF to account or allow for uncertainty about those potential effects of acute exposure.

9. *Comment—infants and children.* We are very concerned that EPA finds that the toxicological data base is sufficient for evaluating prenatal and postnatal toxicity for glufosinate ammonium in human infants and children using exclusively results from rats and rabbits. Although EPA states that there are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study, we are concerned that human infants and children may possess genetic predispositions, biochemical individualities and behavioral patterns very different from rats and rabbits. EPA needs to do a more thorough literature review and interview scientists and medical doctors who may have relevant information on the prenatal and postnatal toxicity for glufosinate ammonium in human infants and children.

As EPA notes, Based on clinical signs of neurological toxicity in short and intermediate dermal toxicity studies with rats, the agency has determined that an added FQPA safety factor of 3x is appropriate for assessing the risk of glufosinate ammonium derived residues in crop commodities. Using the conservative assumptions described in the exposure section above, the percent of the chronic RfD that will be used for exposure to residues of glufosinate ammonium in food for children 1–6 (the most highly exposed sub-group) is 61%. Infants utilize 37% of the chronic RfD. As in the adult situation, drinking water levels of comparison are higher than the worst case DWECs and are expected to use well below 100% of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate ammonium.

Agency response. The short-term (dermal, inhalation, and incidental oral) and acute dietary (females 13–50 years) endpoints are based on reduced fetal body weight and increased fetal death seen in the rabbit developmental toxicity study (6.3 mg/kg/day). An acute dietary endpoint for the general population, including infants and children, could not be identified due to no adverse effects seen in the relevant studies. The chronic dietary endpoint is based on a weight-of-evidence approach from several studies which demonstrated brain glutamine synthetase inhibition and alterations in the electrocardiogram (6.0 mg/kg/day). EPA concluded that the toxicological data base for glufosinate ammonium was not complete and requested the submission of the following studies: (1) Acute neurotoxicity study conducted in the rat which includes glutamine synthetase activity measurement in the liver, kidneys, and brain; (2) a developmental neurotoxicity (DNT) study conducted in the rat which includes comparative glutamine synthetase activity measurement in the liver, kidneys, and brain of the pups and mothers; and (3) a 28–day inhalation toxicity study in rats with glutamine synthetase activity measurements in brain, kidney, liver and lung. EPA also requested additional data to confirm that liver and kidney changes, observed in the absence of histopathological changes, are an adaptive response and not an adverse effect. Kidney and liver function assays should be performed in addition to glutamine synthetase activity measurements. Pending the submission of the requested data, a 10x data base uncertainty factor was applied to all oral and dermal risk assessments and a 100x uncertainty factor was applied to all inhalation risk assessments. These uncertainty factors combined with the traditional 100x inter/intra species uncertainty factor, resulted in a total uncertainty factor of 1,000x for dermal and oral exposure assessments and 3,000x for inhalation exposure assessments (10,000x uncertainty factor reduced to 3,000x based on Agency policy cited in Unit III.B.).

EPA concluded that there is no qualitative or quantitative evidence of increased susceptibility in the developmental toxicity study conducted in rats. Qualitative evidence of increased susceptibility is demonstrated in the rabbit developmental toxicity study since fetal deaths were observed in the presence of lesser maternal toxicity at the same dose. There is also quantitative evidence of increased susceptibility in the rat 2-generation reproduction study. In this study, a decrease in the number of viable pups was observed in the absence of parental toxicity at any dose. Since there is qualitative evidence of increased susceptibility of the young following exposure to glufosinate ammonium, EPA performed a degree of concern analysis to: (1) Determine the level of concern for the effects observed when considered in the context of all available toxicity data; and (2) identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. Based on the data gaps listed above, the EPA did not identify any other residual uncertainties. The established endpoints are protective of pre-/postnatal toxicity following acute and chronic exposures.

The Notice of Filing (NOF) published in the **Federal Register** of July 24, 2002 (67 FR 48465)(FRL–7184–6) represents a summary of the petition prepared by the petitioner and represents the views of the petitioner. As such, and in this case, discrepancies may arise between what is stated in the NOF and the procedures/conclusions employed by EPA when assessing human health risk. For instance, the toxicological data base for glufosinate ammonium has been reevaluated by EPA since July 2002, and some of the conclusions presented in the NOF concerning the toxicity of glufosinate ammonium do not reflect current EPA conclusions.

10. *Comment—cumulative effects section 408(b)(2)(D)(v).* We are deeply concerned about the potential for cumulative effects of glufosinate and its metabolites, and therefore request that EPA not approve the Aventis tolerance petition unless or until peer-reviewed confirming scientific evidence is available that glufosinate and its metabolites do not cause any cumulative effects. It is not acceptable public health policy to dismiss cumulative effects of glufosinate and its metabolites because of lack of scientific evidence and lack of any studies. Law requires that, when considering whether to establish, modify, or revoke a tolerance, the EPA must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate ammonium 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, EPA suggests that glufosinate ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate ammonium has a common mechanism of toxicity with other substances. We disagree with EPA's illogical and unscientific assumption that glufosinate ammonium has a common mechanism of toxicity with other substances. We propose that further study is necessary to conclusively confirm such an assumption.

Agency response. 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, sufficient data to determine whether glufosinate ammonium has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity (i.e., organophosphates), EPA has not made a common mechanism of toxicity finding as to glufosinate ammonium and any other substances and glufosinate ammonium 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 glufosinate ammonium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/.*

11. *Comment—safety determination U.S. population.* We believe that EPA has not done an adequate scientific job with respect to its safety determination for the U.S. population. By using what EPA claims (and may be a flawed set of assumptions) are the conservative assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate ammonium will utilize at most 25% of the chronic RfD for the U.S. population. We disagree with EPA's assumption that the actual exposure is likely to be significantly less than predicted by this analysis as data and models that are more realistic are developed. We disagree with EPA's assumption that exposures below 100% of the reference dose (RfD) are generally assumed to be of no concern because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. We dispute that the acute population of concern, female 13+ utilizes 34% of the acute RfD. We disagree with EPA's assumption that this is a Tier One highly conservative assessment and actual exposure is likely to be far less. Drinking water levels of comparison based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all, assuming that EPA's set of assumptions are reasonably accurate which they may not be. We believe that EPA has erroneously concluded that it is not appropriate to aggregate non-dietary exposures with dietary exposures in a risk assessment because the toxicity end-points are different. We strongly dispute EPA's concluding assumption that there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate ammonium and metabolites.

Agency response. Contrary to what was written in the Notice of Filing prepared by the petitioner, EPA did aggregate dietary (food + drinking water) and residential exposures. Glufosinate ammonium is currently registered for application in the residential setting for lawn renovation and spot treatment purposes. Since the lawn renovation use resulted in exposures greater than EPA's level of concern, revocation of this use was recommended. Therefore, aggregate exposures were conducted by combining dietary exposure and residential exposure resulting from the spot treatment use. The resulting

combined exposures were subtracted from the appropriate dose and drinking water levels of comparison (DWLOCs) were calculated and compared to EECs in groundwater and surface water. The EECs were generated using SCIGROW (groundwater) and PRZM-EXAMS (surface water). SCIGROW is a regression model designed to estimate a screening level of a pesticide concentration at an agricultural site which is highly vulnerable to leaching due to permeable soil overlaying shallow ground water. PRZM-EXAMS is used to estimate concentration that might occur in vulnerable surface water (assumes 87% of the basin is cropped and entire cropped area is treated). Both models assumed 3 applications at 1.5 lbs ai/acre (highest registered/proposed rate). The resulting EECs were less than the DWLOCs indicating aggregate exposures are less than EPA's level of concern.

12. *Comment.* Additional issues not apparently being addressed by EPA such as negative impacts on beneficial insects. Bystander or beneficial insects have been detrimentally effected by the herbicide. Kutlesa and Caveny found that the herbicide had a number of neurotoxic impacts on the skipper butterfly at levels of herbicide experienced in the field. Ahn et al found that glufosinate was toxic to some but not all predatory insects at levels of the herbicide experienced in the field. Studies showing that helpful predatory insects or bystander insects are poisoned by the herbicide seem to have been ignored by regulators of the herbicide.

Agency response. This comment raises an issue concerning the pesticide's registrability under FIFRA and is not directly relevant to the safety determination under FFDCA. For registrations of a pesticide under FIFRA, EPA requires non-target insect data if the proposed use will result in exposure to honey bees (40 CFR 158.590). Two studies on the toxicity of glufosinate ammonium to bees indicates that the herbicide (technical and a formulated product) is practically non-toxic to bees via contact and oral routes. The cited studies suggest that glufosinate ammonium may cause mortality to insects, other than bees, and mites may also be affected. The issues of the hazard to non-target insects will be addressed via registration under FIFRA.

13. *Comment.* Additional issues not apparently being addressed by EPA such as glufosinate residues in other crop varieties. Muller et al studied glufosinate metabolites in transgenic and unmodified sugar beet, carrot, purple foxglove and thorn apple, and they found that unmodified (i.e., non-genetically engineered) crops contained glufosinate mainly while GM crops contained higher levels of glufosinate and acetyl glufosinate. Beriault et al studied phloem transport of glufosinate and acetylglufosinate in canola in GM canola and unmodified canola and found that both chemicals were highly mobile.

Agency response. Common toxicity studies conducted with glufosinate ammonium, *N*-acetyl-glufosinate, and 3-MP indicate that *N*-acetyl-glufosinate and 3-MP exhibit toxic effects at doses equal to or greater than glufosinate ammonium. Based on these toxicity studies, EPA concluded that *N*-acetyl-glufosinate, and 3-MP are not likely to be more toxic than glufosinate ammonium (risk assessment assumes they are of equal toxicity to parent). The field trial data were submitted for the transgenic crops monitored for residues of glufosinate ammonium, *N*-acetyl-glufosinate, and 3-MP in/on all food/feed commodities. Therefore, the higher residues in transgenic crops and/or greater mobility of the residues of concern has been taken into consideration.

14. *Comment.* Two hundred and twenty four comments were received that were opposed to establishing tolerances for glufosinate ammonium in genetically engineered (GE) rice and cotton. They included some or all of the following comments from the campaign to halt the introduction of GE Crops:

I am writing in reference to Bayer CropScience's August 15th petition to establish a tolerance for Glufosinate in or on Rice and cotton. I believe that by approving the residues requested by Bayer you will be exposing the public to unnecessary health risks, potentially increasing use of toxic herbicides on rice and cotton, and endangering the livelihoods of farmers by shutting off valuable export markets that are rejecting transgenic crops. I am concerned about the loss of overseas markets for farmers growing transgenic crops and for farmers whose own ability to market their crops is threatened by genetic pollution. Many countries throughout the world are refusing transgenic crops and USDA organic standards strictly prohibit the use of transgenic seeds. Glufosinate tolerance levels have not been established by the international food standards commission, Codex Alimentarius. Events such as StarLink and last year's ProdiGene incident highlight the inadequacies of our current system in keeping transgenic crops segregated. In Canada, farmers growing transgenic crops have detected triple herbicide resistance in weeds and volunteer canola plants as a result of gene transfer, rendering the herbicides useless. If Bayer's petition is approved, it will only be a matter of time before red rice, which is the same species as cultivated rice and also one of the most virulent weeds on rice farms, becomes resistant to Glufosinate. Similar gene transfer in rice will lead to the need for new, more toxic herbicides. Peer-reviewed scientific studies have shown Glufosinate to be ''highly toxic'' to aquatic animals such as clams, oysters, water fleas, fish and birds at doses as low as 0.5 ppm. As rice is grown in an aquatic environment, the adoption of Glufosinate tolerant rice will have tragic impacts for the ecosystems of rice growing areas. The EPA classifies Glufosinate as ''persistent'' and it has been found in the edible parts of spinach, wheat and radishes more than 120 days after being sprayed with the chemical. The approval of Glufosinate tolerant rice and cotton will send us a step backward in our efforts toward a more sustainable agriculture. Please take action to ensure that our current system of agriculture moves toward one that is less reliant on chemicals, and ensures our farmers a prosperous livelihood. I strongly urge you to deny Bayer's request for approval of Glufosinate tolerance and to work with other government agencies to enact a more rigorous approval and testing process for transgenic crops.

Forty one comments were in favor of establishing the tolerances for glufosinate ammonium. They stated that growers need the new technology to control weed species.

Agency Response. EPA has concluded that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glufosinate-ammonium and its metabolites from established and proposed tolerances. The issues of the hazard to non-target organisms and crop resistance will be addressed via registration under FIFRA. The growing of Herbicide Tolerant crops and potential effects on shipment of crops overseas is addressed by USDA and FDA in their pre-marketing review of Plant-Incorporated Protectant Seeds. EPA is responsile for the safety of the pesticide to be applied to the growing crop.

VII. 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–2003–0058 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 November 28, 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 VII.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–2003–0058, 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).

VIII. 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.

IX. 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:September 23, 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 180.473 is revised to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the following food commodities:

Commodity	Parts per million
Almond, hulls	0.50
Apple	0.05
Banana	0.30
Banana, pulp	0.20
Bushberry subgroup 13B	0.15
Cattle, fat	0.40
Cattle, meat	0.15
Cattle, meat byproducts	6.0
Cotton, gin byproducts	15
Cotton, undelinted seed	4.0
Egg	0.15
Goat, fat	0.40
Goat, meat	0.15
Goat, meat byproducts	6.0
Grape	0.05
Hog, fat	0.40
Hog, meat	0.15
Hog, meat byproducts	6.0
Horse, fat	0.40
Horse, meat	0.15
Horse, meat byproducts	6.0
Juneberry	0.10
Lingonberry	0.10
Milk	0.15
Nut, tree, group 14	0.10
Potato	0.80
Potato, chips	1.60
Potato granules and flakes	2.00
Poultry, fat	0.15
Poultry, meat	0.15
Poultry, meat byproducts	0.60
Salal	0.10
Sheep, fat	0.40
Sheep, meat	0.15
Sheep, meat byproducts	6.0

(2) Tolerances are established for residues of the herbicide glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the following food commodities derived from transgenic canola, transgenic cotton, transgenic field corn, transgenic rice, transgenic soybean and transgenic sugar beet that are tolerant to glufosinate ammonium:

Commodity	Parts per million
Aspirated grain fractions	25.0
Beet, sugar, molasses	5.0
Beet, sugar, roots	0.9
Beet, sugar, tops (leaves)	1.5
Canola, meal	1.1
Canola, seed	0.4
Corn, field, forage	4.0
Corn, field, grain	0.2
Corn, field, stover	6.0
Cotton, gin byproducts	15
Cotton, undelinted seed	4.0
Rice, grain	1.0
Rice, hull	2.0
Rice, straw	2.0
Soybean	2.0
Soybean, hulls	5.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional restrictions.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–24565 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0218; FRL–7318–2]

Quinoxyfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of quinoxyfen in or on sweet and tart cherry, grape, and hop, dried cones. Interregional Research Project Number (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 29, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0218, must be received on or before November 28, 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: 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 identification (ID) number OPP–2003–0218. 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 May 30, 2003 (68 FR 32497) (FRL–7295–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 1E6302 and 2E6474) by the Interregional Research Project Number (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902. That notice included a summary of the petitions prepared by Dow AgroSciences LCC, the registrant. The comment period ended June 30, 2003.

The petitions requested that 40 CFR 180 be amended by establishing tolerances for residues of the fungicide quinoxyfen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline, in or on grape at 0.70 parts per million (ppm) (1E6302); hop, dried cones at 5 ppm (1E6302); and cherry at 0.4 ppm (2E6474).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of quinoxyfen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline in or on cherry, sweet at 0.30 ppm; cherry, tart at 0.30 ppm; grape at 0.60 ppm; and hop, dried cones at 3.0 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 quinoxyfen are discussed below and summarized 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.

The primary target organs affected by quinoxyfen are the liver and kidney. Liver effects were seen in rat and mouse subchronic and dog chronic studies. Subchronic effects in rats and mice included increased liver weights, hepatocellular hypertrophy and individual cell hepatocellular necrosis. These effects were noted at high doses and not observed in the chronic rat and mouse studies since they were performed at lower doses. Chronic effects in the dog included increased liver weights, increased alkaline phosphatase levels and increased incidences of slight microscopic hepatic lesions (increased bile in canaliculi and increased hepatocyte size). Kidney effects were noted only in the rat combined chronic/carcinogenicity study which resulted in an increased severity of chronic progressive glomerulonephropathy in the males. Rabbits were much more susceptible to the effects of quinoxyfen than any other species. Systemic effects observed in the rabbit developmental study included inanition, loss of body weight, perineal soiling, blood in the cage pan associated with urine, and abortions. Body weight decrements were noted in the rat and/or mouse subchronic, chronic and carcinogenicity studies and the rabbit developmental and rat reproduction studies. No effects were noted via the dermal route. No evidence of neurotoxicity or neuropathology was seen in any of the submitted studies, including the acute and subchronic neurotoxicity studies. There was no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies and no concern for mutagenicity. There was no evidence of increased susceptibility in the oral rat or rabbit developmental studies. There was an increased quantitative susceptibility of young animals following pre/postnatal exposure to rats in the reproduction study. In this study, no maternal effects were observed up to the highest dose tested (100 milligrams/kilograms/day (mg/kg/day)); however, minimally reduced F_{1a} pup weights were noted at 100 mg/kg/day.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents (rat)	NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased body weight gain in females, increased liver weights in males and slight hepatocellular hypertrophy (centrilobular and midzonal; both sexes)
870.3100	90–Day oral toxicity rodents (mouse)	NOAEL = 100 mg/kg/day LOAEL = 500 mg/kg/day based on increased liver weights, individual cell hepatocellular necrosis and hepatocellular hypertrophy in both sexes
870.3150	90–Day oral toxicity in nonrodents (dog)	NOAEL = 100 mg/kg/day LOAEL = Not identified
870.3200	28–Day dermal toxicity (rat)	NOAEL = 1,000 mg/kg/day LOAEL = Not identified
870.3700	Prenatal developmental in rodents (rat)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = Not identified Developmental NOAEL = 1,000 mg/kg/day LOAEL = Not identified
870.3700	Prenatal developmental in non-rodents (rabbit)	Maternal NOAEL = 80 mg/kg/day LOAEL = 200 mg/kg/day based on inanition, clinical signs, decreased body weights, body weight gains, and food consumption and on increased incidences of abortion Developmental NOAEL = 80 mg/kg/day LOAEL = 200 mg/kg/day based on increased incidences of abortion
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 100 mg/kg/day LOAEL = Not identified Reproductive NOAEL = 100 mg/kg/day LOAEL = Not identified Offspring NOAEL = 20 mg/kg/day LOAEL = 100 mg/kg/day based on a minimal decrease in F_{1a} pup weights
870.4100	Chronic toxicity rodents	See 870.4300

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic toxicity dogs	NOAEL = 20 mg/kg/day LOAEL = 200 mg/kg/day based on increased alkaline phosphatase, increased absolute and relative (to body) liver weights, and an increased incidence of very slight to slight microscopic hepatic lesions
870.4200	Carcinogenicity rats	See 870.4300
870.4200	Carcinogenicity mouse	NOAEL = 80 mg/kg/day LOAEL = 250 mg/kg/day based on decreased body weight gain in both sexes No evidence of carcinogenicity
870.4300	Combined chronic/carcinogenicity (rat)	NOAEL = 20 mg/kg/day LOAEL = 80 mg/kg/day based on increases in severity of chronic progressive glomerulonephropathy in the males and minimal decreases in body weight and body weight gain in the males and females No evidence of carcinogenicity
870.5100	Gene mutation (bacterial reverse mutation)	Negative for inducing reverse mutation in bacteria exposed to doses up to 5,000 μg/plate (-S9) and 1,000 μg/plate (+S9)
870.5300	Gene mutation (*In vitro* mammalian cell gene mutation)	Negative for inducing forward mutation in CHO (mammalian) cells treated up to 20 μg/ml (-S9) and 80 μg/ml (+S9)
870.5375	Cytogenetics (*In vitro* mammalian chromosome aberration (RL))	Negative up to 100 μg/ml (-S9 and +S9)
870.5395	Cytogenetics (mammalian micronucleus (mouse))	Negative up to 5,000 mg/kg
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL = 2,000 mg/kg LOAEL = Not identified
870.6200	Subchronic neurotoxicity screening battery	NOAEL = 80 mg/kg/day LOAEL = Not identified

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics (rat)	Quinoline-labeled and phenyl-labeled quinoxyfen were rapidly absorbed with approximately 68-85% of the administered dose being eliminated within 24 hours. Overall recovery of the dosed radioactivity ranged from 83.5-96.2%. Sex, dose, and multiple dosing had little or no effect on the excretion profile at 48 hours post-dosing. Changing the position of the ^{14}C-label altered the pattern of excretion. The major route of elimination was through the urine in the phenyl-labeled test substance (44.9-48.7% of dose in urine and 38.2-39.8% of dose in feces) and through the feces in the quinoline-labeled test substance (65.8-78.3% of dose in feces and 13.4-19.7% of dose in urine). Biliary excretion increased its contribution to fecal radioactivity as the dose increased. Concentrations of radioactivity in the tissues were generally slightly lower in the males than females and in the low-dose compared to the high-dose group. The highest concentrations of radioactivity were found in the kidney, liver, ovaries, perirenal fat, GI tract and carcass. Maximum plasma concentration occurred between 0.5 and 1.5 hours, and elimination half-lives were <= 1 hour and 15-19 hours (10 mg/kg group) and 2-3 hours and 18-22 hours (500 mg/kg group). The presence of several radioactive components was determined in the unhydrolyzed urine (up to 12), fecal extracts (up to 8), and bile (up to 6). No differences in the metabolite profile were observed that were related to sex or multiple dosing. Increasing amounts of the parent compound were found in the feces with increasing dose. No other dose-related differences were observed. Identified metabolites accounted for 41.0-42.8% dose in the [Phenyl-U-^{14}C] XDE-795 treated group, and only 17.0-31.7% dose in the other treated groups. The [Phenyl-U-^{14}C] XDE-795 treated group had no urinary metabolites in common with the [2-Quinoline-^{14}C] XDE-795 treated groups suggesting cleavage of the parent molecule. An acid-labile conjugate of 4-fluorophenol was found in the urine of the [Phenyl-U-^{14}C] XDE-795 treated group (28.7-32.8% dose). 5,7-Dichloro-4-hydroxyquinoline was observed in the urine of the [2-Quinoline-^{14}C] XDE-795 treated groups in small quantities (0.7-1.7% dose). Thus, the identified metabolites in the urine followed diaryl-ether cleavage of the parent compound. Fluorophenyl-ring-OH-XDE-795 (two isomers) were found in the feces of all treated groups (5.4-10.6% dose). In the bile of the treated groups, two major metabolites were identified, a glucuronide and/or sulfate conjugate(s) of the two isomers of fluorophenyl ring-hydroxy-XDE-795 (9-19% dose) and an unidentified metabolite (13-21% dose).

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 factor (SF) is retained due to concerns unique

to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for quinoxyfen used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR QUINOXYFEN 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) and acute dietary (general population including infants and children)	Not applicable	Not applicable	There were no toxic effects attributable to a single dose. Therefore, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13-50 years old
Chronic dietary (all populations)	NOAEL= 20 mg/kg/day UF = 100 Chronic RfD = 0.20 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.20 mg/kg/day	Combined chronic toxicity/carcinogenicity study in rat LOAEL = 80 mg/kg/day, based upon increases in severity of chronic progressive glomerulonephropathy in the males and minimal decreases in body weight and body weight gain in both sexes
Cancer (oral, dermal, inhalation)	Classified as not likely to be carcinogenic to humans	Not applicable	No evidence of carcinogenicity in rats and mice

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Quinoxyfen is a new chemical and therefore, these are the first tolerances to be established for the residues of quinoxyfen. Risk assessments were conducted by EPA to assess dietary exposures from quinoxyfen in food as follows:

i. *Acute exposure*. Quantitative 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. There were no toxic effects attributable to a single dose. Therefore, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. As a result, no acute risk is expected from exposure to quinoxyfen and hence no quantitative acute dietary risk assessment was performed.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An unrefined, Tier 1 chronic-dietary exposure assessment using tolerance-level residues and assuming 100% CT for all proposed commodities, and default DEEM Version 7.76 processing factors for all commodities.

iii. *Cancer*. Quinoxyfen has been classified as not likely to be carcinogenic to humans. Therefore, a quantitative risk assessment was not conducted to assess cancer risk.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for quinoxyfen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of quinoxyfen.

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 Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 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. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to quinoxyfen, they are further discussed in the aggregate risk sections see Unit E.

Based on the FIRST and SCI-GROW models, the EECs of quinoxyfen for chronic exposures are estimated to be 0.8 parts per billion (ppb) for surface water and 0.006 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). Quinoxyfen is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from 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 quinoxyfen has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to quinoxyfen and any other substances and quinoxyfen 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 quinoxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies. There is evidence of increased quantitative susceptibility (minimal decrease in F_{1a} pup weights) in the rat multi-generation reproduction study, but the concern is low since: (1) The effects in pups are well-characterized with a clear NOAEL; (2) the pup effects are minimal at the LOAEL and only noted in the first-generation offspring; and (3) the doses and endpoints selected for regulatory purposes would address the concerns of the pup effects noted in the rat reproduction study. Therefore, there are no residual uncertainties for prenatal/postnatal toxicity in this study.

3. *Conclusion*. There is a complete toxicity data base for quinoxyfen and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There are no residual uncertainties for prenatal/postnatal toxicity. No additional safety factor is needed for data base uncertainties. No clinical sign of neurotoxicity or neuropathology was seen in the data base. A developmental neurotoxicity study is not required. Therefore, EPA determined that the 10X SF to protect infants and children should be reduced to 1X.

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 youth), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in

drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. As a result, no acute risk is expected from exposure to quinoxyfen.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to quinoxyfen from food will utilize less than 1% of the cPAD for the U.S. population, 1% of the cPAD for all infants (< 1 year old) and 1% of the cPAD for children (1–2 years old), the children subpopulation at greatest exposure. There are no residential uses for quinoxyfen that result in chronic residential exposure to quinoxyfen. In addition, there is potential for chronic dietary exposure to quinoxyfen in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO QUINOXYFEN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.20	<1%	0.8	0.006	7,000
All infants (<1 year old)	0.20	1%	0.8	0.006	2,000
Children (1-2 years old)	0.20	1%	0.8	0.006	2,000

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). Quinoxyfen is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Quinoxyfen is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Quinoxyfen has been classified as not likely to be carcinogenic to humans. Therefore, quinoxyfen is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to quinoxyfen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

IR-4 has proposed a gas chromatography (GC) method with mass-selective detection (MSD) entitled *Determination of DE-795 Residues in Grape Wine, Must, and Pomace ERC95.26* (and its supplement S1) for the enforcement of proposed tolerances for residues of quinoxyfen in/on grapes, cherries, and hops. Method ERC 95.26 is classified as acceptable and conforms with the criteria of OPPTS Harmonized Guideline 860.1340. The petitioner has submitted a study which investigated the behavior of quinoxyfen through MRMs outlined in FDA's Pesticide Analytical Manual (PAM), Volume I, Appendix II. The study summary reported that depending on spike levels, certain MRM Protocols (D, E, and F) yielded partial (incomplete) to complete recoveries of quinoxyfen in grapes (non-fatty matrix) and ground beef (fatty matrix).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Mexican, Canadian or Codex maximum residue limits established for quinoxyfen on sweet and tart cherries, grapes, or hops. Therefore, no compatibility problems exist for these tolerances.

V. Conclusion

Therefore, tolerances are established for quinoxyfen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline in or on cherry, sweet at 0.30 ppm; cherry, tart at 0.30 ppm; grape at 0.60 ppm; and hop, dried cone at 3.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0218 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 November 28, 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–2003–0218, 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: September 23, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.588 is added to subpart C to read as follows:

§ 180.588 Quinoxyfen; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide quinoxyfen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline in or on the following raw agricultural commodities:

Commodity	Parts per million
Cherry, sweet	0.30
Cherry, tart	0.30
Hop, dried cones	3.0
Grape	0.60

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–24561 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0315; FRL–7328–6]

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on corn, sweet, forage; corn, sweet, stover; juneberry; lingonberry; pistachio; salal; and safflower and increases the tolerance on cattle, meat by products; corn, sweet, kernels plus cob with husk removed; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; milk; and sheep, meat byproducts. BASF Corporation requested the tolerances for corn, sweet, forage; corn, sweet, stover and the increase in tolerance for corn, sweet, kernels plus cob with husk removed; milk; and meat products under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Interregional Project #4 (IR-4) requested the tolerances on juneberry, lingonberry, pistachio, salal, and safflower 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 September 29, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0315, must be received on or before November 28, 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 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. To determine whether you or your business may be affected by

this action, you should carefully examine the applicability provisions in Unit II. 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–2003–0315. 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 January 18, 2000 (65 FR 2612) (FRL–6486–4), August 7, 2002 (67 FR 51267) (FRL–7191–3), and September 11, 2002 (67 FR 57593) (FRL–7198–11), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (9E6012, 9E6021, and 0E6150) by the Interregional Research Project Number 4, Technology Centre and Rutgers State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 and pesticide petition (2F4075) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. These notices included summaries of the petitions prepared by BASF Corporation, the registrant. There were no comments received in response to these notices of filing.

These petitions requested that 40 CFR part 180 be amended to establish tolerances for cyclohexen-1-one moiety (calculated as the herbicide), in or on corn, sweet, forage at 3.0 parts per million (ppm); corn, sweet, stover at 3.5 ppm; lingonberry at 5.0 ppm; juneberry at 5.0 ppm; pistachios at 0.2 ppm; safflower at 15.0 ppm and salal at 5.0 ppm, and increase the tolerance in cattle, meat byproducts from 0.2 ppm to 1.0 ppm; corn, sweet, kernels plus cob with husk removed from 0.2 ppm to 0.4 ppm; goat, meat byproducts from 0.2 ppm to 1.0 ppm; horse, meat byproducts from 0.2 ppm to 1.0 ppm; milk from 0.05 ppm to 0.5 ppm, and sheep, meat byproducts from 0.2 ppm to 1.0 ppm. The tolerance increases were a result of a 15-day reduction in the pre-harvest interval for sweet corn requested by the registrant.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of the herbicide sethoxydim, (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on corn, sweet, kernels plus cob with husk removed at 0.4 ppm; corn, sweet, forage at 3.0 ppm; corn, sweet, stover at 3.5 ppm; lingonberry at 5.0 ppm; juneberry at 5.0 ppm; milk at 0.5 ppm; cattle, meat byproducts at 1.0 ppm; goat, meat byproducts at 1.0 ppm; hog, meat byproducts at 1.0 ppm; horse, meat byproducts at 1.0 ppm and sheep meat byproducts at 1.0 ppm; pistachio at 0.2 ppm; safflower at 15.0 ppm and salal at 5.0 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 natures of the toxic effects caused by sethoxydim 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.—TOXICOLOGY PROFILE FOR SETHOXYDIM TECHNICAL

Guideline No.	Study Type	Results
870.1100	Acute oral—rats	LD_{50} = male (M): 3,125 milligram/kilogram (mg/kg); female (F) 2,676 mg/kg (category III)
870.1200	Acute dermal—rats	LD_{50} = > 5,000 mg/kg (category III)
870.1300	Acute inhalation—rats	LC_{50} = M: 6.03 meter/Liter (m/L); F 6.28 m/L (category III)
870.2400	Primary eye irritation—rabbits	No irritation (category IV)
870.2500	Primary skin irritation—rabbits	No irritation (category IV)
870.2600	Dermal sensitization—guinea pigs	Waived based on lack of sensitization in guinea pigs with a formulated product
870.3100	90-Day oral toxicity rodents (rats)	*Males* NOAEL = 60.4 LOAEL = 196.3 mg/kg/day *Females* NOAEL = 66.2 LOAEL = 200.5 mg/kg/day Based on decreases in body weight, body weight gain, and food efficiency
870.3100	90-Day oral toxicity rodents (mice)	*Males* NOAEL = 45.6 LOAEL = 137.1 mg/kg/day *Females* NOAEL = 52.7 LOAEL = 164.4 mg/kg/day based on increased liver weight and histopathological evidence of hepatocellular hypertrophy
870.3150	90-Day oral toxicity (non-rodents-dogs)	*Males and females* NOAEL not identified LOAEL = 3.4 mg/kg/day (tentative) based on possible treatment-related clinical findings of cystitis of urinary bladders
870.3200	21-Day dermal toxicity (rabbits)	*Males and females* NOAEL = 1,000 mg/kg/day higest dose tested (HDT) LOAEL not established. No localized or systemic effects
870.3465	4-Week inhalation toxicity (rats)	*Males and females* NOAEL = 0.3 mg/L (81 mg/kg/day) LOAEL of 2.4 mg/L (651 mg/kg/day), based on increased liver weight, clinical chemistry (increased total serum bilirobin), and liver histopathology
870.3700	Prenatal developmental toxicity (rats)	*Maternal* NOAEL = 180 mg/kg/day LOAEL = 650 mg/kg/day (irregular gaits, decreased activity, excessive salivation, and anogenital staining) *Developmental* NOAEL = 180 mg/kg/day LOAEL = 650 mg/kg/day (21–22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral, and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum, and/or transverse processes, sternebrae and/or metatarsals, and pubes)
870.3700	Prenatal developmental toxicity (rabbits)	*Maternal* NOAEL = 320 mg/kg/day LOAEL = 400 mg/kg/day, (based on 37% reduction in body weight gain without significant differences in group mean body weights, and decreased food consumption during dosing) *Developmental* NOAEL 320 mg/kg/day LOAEL = 400 mg/kg/day HDT based on an increase in the incidence of incompletely ossified 6th sternebrae

TABLE 1.—TOXICOLOGY PROFILE FOR SETHOXYDIM TECHNICAL—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rats)	*Systemic* NOAEL ≥150 mg/kg/day LOAEL >150 mg/kg/day *Reproductive* NOAEL ≥150 mg/kg/day LOAEL >150 mg/kg/day *Offspring* NOAEL = 30 mg/kg/day LOAEL = 150 mg/kg/day, based on decreased body weight in F2b pups during lactation and tail abnormalities seen in F1a and F1b offspring
870.4100	Chronic toxicity (dogs)	*Males* NOAEL = 17.5 mg/kg/day LOAEL = 110 mg/kg/day *Females* NOAEL = 19.9 mg/kg/day LOAEL = 129 mg/kg/day, based on increase hemosiderosis in the spleen and depressed myeloid erythropoiesis in the sternal bone marrow, increased absolute and relative liver weights, increased alkaline phosphatase and ALT levels
870.4200	Carcinogenicity (mice)	*Males* NOAEL = 13.8 mg/kg/day LOAEL = 41.2 mg/kg/day, based on early onset of liver effects including hepatocellular hypertrophy and fatty degeneration in male mice. No evidence of carcinogenicity
870.4300	Combined chronic/carcinogenicity (rats)	*Male* NOAEL = 12 mg/kg/day LOAEL = 48 mg/kg/day, based on liver toxicity (centrilobular hepatocellular hypertrophy) *Females* NOAEL = 66 mg/kg/day LOAEL = 204 mg/kg/day, based on decreased body weight, body weight gain, liver toxicity (centrilobular hepatocellular hypertrophy), and lung lesions (heart failure cells and interstitial fibrosis) No evidence of carcinogenicity
870.5100	Bacterial reverse mutation	*Negative* Concentrations 313–5,000 µg/plate
870.5300	*In vitro* mammalian cell gene mutation	*Negative* Concentrations 500–5,000 µg/mL
870.5300	*In vitro* mammalian cell gene mutation	Negative 10,000 mg/kg
870.5300	*In vitro* mammalian cell gene mutation	*Negative*
870.5550	Unscheduled DNA synthesis (rat hepatocyte cells)	*Negative* Concentrations 10 to 507 µg/mL
870.5915	*In vivo* sister chromatid exchange (chinese hamster bone marrow)	*Negative* Dose 0, 0.5, 1.67, 5 gram (g)/kg
870.7485	Metabolism and pharmacokinetics (rats)	Excretion is extremely rapid and tissue accumulation is negligible, assuming DMSO vehicle does not affect excretion or storage of NP-55, 78% excreted into urine and 20.1% in feces
870.7485	Metabolism and pharmacokinetics (rats)	Administration of radioactively labeled NP-55 yielded 0.8% radioactivity in urine identified as hydroxymetabolites represented by 6-OH M2SO2 and 2 other metabolites found by mass spectrometry were MSO and M1SO

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. A UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. Acceptable developmental toxicity studies were performed in rats and rabbits, with evidence of neurotoxicity in the rat study, and an acceptable 2-generation reproduction study in rats. The developmental toxicity rabbit study did not exhibit either quantitative of qualitative susceptibility. Neurotoxicity studies are not available. Although, the Agency has concluded that there is a concern for prenatal and/or postnatal toxicity resulting from exposure to sethoxydim, the concern is reduced because the fetal effects in the developmental rat study were seen only at the high dose. Concern is also low because the LOAEL for offspring toxicity for the 2-generation reproduction rat study is based on conservative determinations of offspring toxicity. However, due to lack of subchronic and developmental neurotoxicity studies with evidence of developmental (tail) abnormalities in the rat developmental and reproductive studies the additional 10X FQPA safety factor (SF) in the form of a data base UF was retained.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the reference dose (RfD) is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional SF is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences, the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for sethoxydim used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SETHOXYDIM FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessmentk	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age and including infants and children)	NOAEL = 180 mg/kg/day) UF = 1,000 Acute RfD = 0.18 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 0.18 mg/kg/day	Rat developmental toxicity *Developmental* LOAEL = 650 mg/kg/day based on decreased fetal body weight, tail abnormalities, delayed ossification
Acute dietary (General population)	NOAEL = 180 mg/kg/day UF = 1,000 Acute RfD = 0.18 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 0.18 mg/kg/day	Rat developmental toxicity *Maternal* LOAEL = 650 mg/kg/day based on irregular gait that was observed in 12/34 dams on the first day of dosing
Chronic dietary (All populations)	NOAEL= 14 mg/kg/day UF = 1,000 Chronic RfD = 0.014 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD ÷ Special FQPA SF = 0.014 mg/kg/day	Mouse carcinogenicity study LOAEL = 41 mg/kg/day based on liver hypertrophy and fatty degeneration
Short-term Incidental oral (1–30 days)	NOAEL= 180 mg/kg/day	*Residential* LOC for MOE = 1,000	Rat developmental toxicity *Maternal* LOAEL = 650 mg/kg/day based on irregular gait that was observed in 12/34 dams on the first day of dosing
Intermediate-term Incidental oral (1–6 months)	NOAEL = 45.6 mg/kg/day	*Residential* LOC for MOE = 1,000	90–Day mouse oral toxicity LOAEL = 137 mg/kg/day based on increased liver weight and hepatocellular hypertrophy

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SETHOXYDIM FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessmentk	Study and Toxicological Effects
Short-term dermal (1 to 30 days)	Dermal (or oral) study NOAEL= NA	*Residential* LOC for MOE = NA	Quantification of dermal exposure risk assessment is not required because of lack of dermal and pre-natal toxicity in rabbits, and the low dermal absorption physical and chemical properties of sethoxydim
Intermedia-term dermal (1 to 6 months)	Dermal (or oral) study NOAEL = NA	*Residential* LOC for MOE = NA	Quantification of dermal exposure risk assessment is not required because of lack of dermal and prenatal toxicity in rabbits, and the low dermal absorption physical and chemical properties of sethoxydim
Long-term dermal > 6 months)	Dermal (or oral) study NOAEL= NA	*Residential* LOC for MOE = NA	Quantification of dermal exposure risk assessment is not required because of lack of dermal and prenatal toxicity in rabbits, and the low dermal absorption physical and chemical properties of sethoxydim
Short-term Inhalation (1 to 30 days)	Inhalation study NOAEL= 81 mg/kg/day	*Residential* LOC for MOE = 1,000	28-Day rat inhalation LOAEL = 651 mg/kg/day based on increased liver weight, clinical chemistry (increased total serum bilirobin), and liver histopathology
Intermediate-term Inhalation (1 to 6 months)	Inhalation study NOAEL = 81 mg/kg/day	*Residential* LOC for MOE = 1,000	28-Day rat inhalation LOAEL = 651 mg/kg/day based on increased liver weight, clinical chemistry (increased total serum bilirobin), and liver histopathology
Cancer (oral, dermal, inhalation)	''Not likely human carcinogen'' based on the lack of evidence of carcinogenicity in rats and mice		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no-observed-adverse-effect-level, LOAEL = lowest-observed-adverse-effect-level, PAD = population-adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of sethoxydim and its metabolites, in or on a variety of raw agricultural commodities. Tolerances are also currently established for secondary residues in meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm (except 2.0 ppm in poultry meat byproducts); eggs at 2.0 ppm, and milk at 0.05 ppm. Time limited tolerances (to expire by 12/31/03) are established for residues in milk at 0.5 ppm and the meat byproducts of cattle, goats, hogs, horses, and sheep at 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from sethoxydim in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. This acute assessment used tolerance level residues for most of the crops but limited refinement was obtained though the incorporation of field trial data and experimental processing factors for some of the crops expected to be more highly associated with dietary exposure to sethoxydim. Specifically, field trial data were incorporated for apples, pears, and other pome fruits, grapes, oranges, potatoes, strawberries, peaches, succulent green peas, succulent green beans, and succulent lima beans. Empirical processing data for apples, grapes, tomatoes, potatoes and oranges were also used. The processing data for orange juice was also translated to other citrus juices. Percent crop treated (PCT) information was available for most crops and was used wherever possible to refine the assessment. Tolerance level residues were used for meat, poultry, milk and eggs. With the refinements incorporated in this assessment, the acute dietary analyses for sethoxydim show that the estimated risks from acute dietary exposure to sethoxydim are below <100% aPAD for the U.S. population.

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 U.S. Department of Agriculture (USDA) 1989–1992 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analyses (limited refined dietary risk assessment) used tolerance level residues for all crops and the PCT for many crops. For the chronic analyses, refinement was obtained by calculation of anticipated residues for meat and

milk, and without using field trial data. The results of this analysis indicate that the chronic dietary risk (food only) associated with existing uses of sethoxydim is below <100% cPAD for the U.S. population.

iii. *Cancer*. Sethoxydim is classified as ''not likely to be a human carcinogen''. Therefore, a quantitative assessment of aggregate cancer risk was not performed.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

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.

The Agency used PCT information as follows.

Alfalfa 0.1%; apples 0.1%; apricot 0.02%; asparagus 5%; beans, lima 9%; beans/peas, dried 14%; beets, sugar 8%; broccoli 1%; cabbage 1%; canola 4%; cantaloupe 8%; carrots 2%; cauliflower 2%; cherries 0.4%; collards 2%; corn, field 0.1%; corn, sweet 0.5%; cotton 0.5%; cranberries 8%; cucumbers 6%; eggplant/peppers 5%; flax 38%; grapefruit 1%; grapes 1%; lemons 5%; lettuce 1%; nectarines 0.1%; oranges 3%; peaches 0.4%; peanuts 5%; peppers, bell 3%; peppers, chili 11%; pears 0.03%; peas, green 2%; potatoes 4%; potatoes, sweet 18%; pumpkins 8%; root/tuber vegetables (other than carrots, potatoes, and sugar beets) 5%; soybeans 2%; spinach 0.3%; squash 8%; strawberries 5%; sunflowers 14%; tomatoes 4%; vegetables, other 6%; watermelons 12%.

The Agency believes that the three conditions listed in Unit IV have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. 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 sub population 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 sethoxydim 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 sethoxydim in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of sethoxydim.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 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. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD or percent population adjusted dose (%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 sethoxydim they are further discussed in the aggregate risk section Unit III. E.

Based on the FIRST and SCI-GROW models the EECs of sethoxydim for

acute exposures are estimated to be 100 parts per billion (ppb) for surface water and 1 ppb for ground water. The EECs for chronic exposures are estimated to be 20 ppb for surface water and 1 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). Sethoxydim is currently registered for use on the following residential non-dietary sites: Ornamentals and flowering plants, recreational areas, and buildings/structures (non-agricultural-outdoor). The risk assessment was conducted using the following exposure assumptions:

i. *Residential handler*. There is potential sethoxydim exposure to residential handlers who mix, load and apply sethoxydim for use on residential turf and ornamentals. Because dermal toxicity endpoints were not identified, only the following exposure scenarios were assessed:

- Adult inhalation exposure from mixing/loading/applying sethoxydim for spot treatment with a low-pressure handwand.
- Adult inhalation exposure from mixing/loading/applying sethoxydim for spot treatment with a hose-end sprayer.

ii. *Residential post-application*. The labeled use pattern for sethoxydim only suggests spot treatments for non-agricultural sites (e.g., fence lines, at base of ornamental plantings, etc.). The Agency considered the potential residential post-application exposure from spot treatment to be negligible. However, an exposure/risk assessment for broadcast turf treatment, using the applicable endpoints, was included in this assessment because there is no labeled recommendation against broadcast treatment of lawns. Sethoxydim treatment may take up to 3 weeks before visible burnback of turf is seen, and the previous risk assessment for other agricultural use sites included residential post-application exposure from turf use.

Broadcast turf treatment would result in the potential for dermal (adults and children) and incidental oral exposure (children only) during post-application activities. However, because the appropriate dermal toxicity endpoints for sethoxydim were not identified, and because inhalation is considered negligible for post-application exposure, only the following post-application exposure scenarios were assessed:

1. Incidental non-dietary ingestion of pesticide residues on lawns from hand-to-mouth transfer.
2. Incidental non-dietary ingestion of residues from object-to-mouth activities (pesticide-treated turfgrass).
3. Incidental non-dietary ingestion of soil (base of pesticide-treated ornamentals).

Post-application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings.

The exposure via incidental non-dietary ingestion involving other plant material (i.e., resulting from children's handling of treated ornamentals) may occur but is considered negligible.

The exposure and risk estimates for the three residential exposure scenarios are assessed for the day of application (day ''0'') because it is assumed that toddlers could contact the lawn immediately after application. On the day of application, it was assumed that 5% of the application rate is available from the turf grass as transferrable residue (20% for object-to-mouth activities). Intermediate-term exposure is also expected (up to 6 months) because reapplications are not limited, and may be necessary to continue suppression of grass. The application rates used for turf and ornamental gardens are 0.33 and 0.49 lb active ingredient acres (ai/A) respectively.

4. *Cumulative effects from 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 sethoxydim has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to sethoxydim and any other substances and sethoxydim 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 sethoxydim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA will 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 margin of exposure (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*. EPA determined that there are no residual uncertainties for prenatal and/or postnatal toxicity based on the following:

i. There was evidence of qualitative susceptibility in the developmental rat study with the occurrence of more severe effects in the fetuses (tail abnormalities and delayed ossification) than the maternal animals (clinical signs of neurotoxicity). Tail abnormalities were also seen in the F1a and F1b offspring of the 2-generation reproduction rat study. However, the degree of concern is low for the fetal effects in the developmental rat study since the fetal anomalies were seen only at the high dose 650 mg/kg/day which is close to the Limit Dose (LTD) (1,000 mg/kg/day). They were seen in the presence of maternal toxicity (clinical signs of neurotoxicity) and clear NOAELs/LOAELs were established for maternal and developmental toxicities.

ii. Evidence of quantitative susceptibility was indicated in the 2-generation reproduction rat study, by a slightly higher decrease (11–13%) in the body weights of offspring during lactation as compared to an 8–10% decrease in the body weights of the parental animals. Again, the degree of concern is also low for the 2-generation reproduction rat study since the LOAEL for offspring toxicity is based on a conservative determination of a minimal response in pup body weight decrements at the same dose that also caused decreases in body weights in the parental animals.

iii. The developmental toxicity study in the rabbits did not exhibit either quantitative or qualitative susceptibility.

3. *Conclusion*. Exposure data for sethoxydim are complete or are estimated based on data that reasonably accounts for potential exposures. The toxicity data base, however, is not complete. Due to evidence of developmental (Tail) abnormalities in the rat developmental and reproductive studies, EPA has required submission of subchronic and developmental neurotoxicity studies. After reviewing the data base, EPA concluded that there was not a reliable basis for establishing an additional safety factor for the protection of children at a value different than the statutory default of 10X. Accordingly, EPA has retained the additional 10X FQPA safety factor in the form of a Data base Uncertainty Factor.

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 U.S. EPA Office of Water are used to calculate DWLOCs: 2 L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP 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 sethoxydim will occupy 52% of the aPAD for the U.S. population, 92% of the aPAD for children aged 1–2 and 92% of the aPAD for children aged 3–5. In addition, there is potential for acute dietary exposure to sethoxydim 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 SETHOXYDIM

Population Subgroup	aPAD (mg/kg)	Acute Food Exp mg/kg/day	Surface Water EEC (ppb)[1]	Ground Water EEC (ppb)[1]	Acute DWLOC (ppb)[2]
General U.S. population	0.18	0.096	100	1.0	2,940
Children 1–2 years	0.18	0.165	100	1.0	150
Children 3–5 years	0.18	0.165	100	1.0	152

[1] The crop producing the highest risk level was used.
[2] Chronic DWLOC(µg/L) = maximum chronic water exposure (mg/kg/day) x body weight (kg) water consumption (L) x 10^3 mg/µg.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to sethoxydim from food will utilize 24% of the cPAD for the U.S. population, and 75% of the cPAD for infants <1 year old. Based on the use pattern, chronic residential exposure to residues of sethoxydim is not expected. In addition, there is potential for chronic dietary exposure to sethoxydim 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 SETHOXYDIM.

Population Subgroup	cPAD (mg/kg)	Chronic Food Exp mg/kg/day	Surface Water EEC (ppb)[1]	Ground Water EEC (ppb)[1]	Chronic DWLOC (ppb)[2]
General U.S. population	0.014	0.0038	20	1.0	358
Infants (<1 year)	0.014	0.0105	20	1.0	35.3

[1] The crop producing the highest level was used.
[2] Chronic DWLOC (µg/L) = [maximum chronic water exposure (mg/kg/day) x body weight (kg)] ÷ [water consumption (L) x 10^{-3} mg/µg.]

3. *Short-term risk (1–30 days).* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sethoxydim is currently registered for uses 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 sethoxydim.

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 greater than 1,000 for all exposure scenarios in children aged 1–2 years, which includes oral hand-to-mouth, oral object-to-mouth and soil ingestion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. Short-term aggregate risk assessments were not calculated for adult handlers because oral and inhalation endpoints lack a common toxicity endpoint. The children 1–2 years–of–age scenario was chosen because it was the highest estimated food exposure and thus, also protective of children 3–5 years of age. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of sethoxydim in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface water 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 SETHOXYDIM

Population Subgroup	Target MOE	Target Maximum Exposure[1] (mg/kg/day)	Surface Water EEC[2] (ppb)	Ground Water EEC[2] (ppb)	Short-Term DWLOC (ppb)
Children 1–2 years old	1,000	0.18	2 0	1	1,650

[1] Target Maximum Exposure = NOAEL/Target MOE.
[2] Estimate for the highest use rate was chosen.

4. *Intermediate-term risk (1–6 months).* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sethoxydim is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for sethoxydim.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of greater than 1,000 for all exposure scenarios in children aged 1–2 years old, which includes oral hand-to-mouth, oral object-to-mouth and soil ingestion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. Intermediate term aggregate risk assessments were not calculated for adult handlers because oral and inhalation endpoints lack a common toxicity endpoint. The children 1–2 years– of –age scenario were chosen because it was the highest estimated food exposure and thus, also protective of children 3–5 years of age. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO SETHOXYDIM

Population Subgroup	Target MOE	Target Maximum Exposure[1] (mg/kg/day)	Surface Water EEC[2] (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Children 1–2 years old	1,000	0.046	20	1	330

[1]Target Maximum Exposure = NOAEL/Target MOE.
[2]Estimate for the highest use rate was chosen.

5. *Aggregate cancer risk for U.S. population.* Sethoxydim is not expected to pose a cancer risk because no evidence of carcinogenicity was found in adequate animal tests in two different species.

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 sethoxydim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography with flame photometric detection (GLC/FPD) in the sulfur mode) is available [BASF Wyandotte Corporation's (BWC's) Method No. 30, 3/15/82; MRID 44864501; Method I, PAM II] to enforce the tolerance expression in plant and livestock commodities.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits or tolerances for sethoxydim on lingonberry, juneberry, salal, or safflower. Therefore, international harmonization is not an issue for the proposed uses of sethoxydim on lingonberry, juneberry, salal, pistachio, or safflower.

There are no Codex or Mexican maximum residue limits or tolerances for sethoxydim on sweet corn. There is a Canadian tolerance on corn of 0.5 ppm for sethoxydim and metabolites

containing the cyclohex-2-enone moiety expressed as sethoxydim. The tolerance for the proposed use of sethoxydim on sweet corn is not being harmonized with the Canadian tolerance until the Agency can revise its risk assessment to evaluate the risks of the harmonization with the Canadian tolerance.

C. Conditions

As a condition of registration, the registrant must submit:

1. *Residue chemistry.* i. To support the proposed use on safflower, storage stability data for sethoxydim, MSO, and 5-OH-MSO2 in safflower oil (or another oil) stored frozen for 1 year are needed since storage stability data for sethoxydim residues in oil have not previously been submitted.

ii. As recommended in OPPTS 860.1500, five field trials are required for safflower, with suggested distribution in Region 7 (two Trials) and Region 10 (three Trials). Four studies, which were conducted in 1988, were submitted from Region 10 (one study), Region 5 (two studies), and Region 7 (one study). EPA has determined that two additional studies from Region 10 must be submitted.

2. *Toxicology.* i. Subchronic neurotoxicity study—rat.

ii. Developmental neurotoxicity study (DNT)—rat.

V. Conclusion

Therefore, tolerances are established for the combined residues of sethoxydim, (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on corn, sweet, kernels plus cob with husk removed at 0.4 parts per million (ppm); corn, sweet, forage at 3.0 ppm; corn, sweet, stover at 3.5 ppm; lingonberry at 5.0 ppm; juneberry at 5.0 ppm; milk at 0.5 ppm; cattle, meat byproducts at 1.0 ppm; goat, meat byproducts at 1.0 ppm; hog, meat byproducts at 1.0 ppm; horse, meat byproducts at 1.0 ppm; sheep, meat byproducts at 1.0 ppm; pistachio at 0.2 ppm; safflower at 15.0 ppm and salal at 5.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA's 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–2003–0315 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 November 28, 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–2003–0315, 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 record keeping requirements.

Dated: September 23, 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 180.412 is amended as follows:

■ i. In the table to paragraph (a) by revising the entries for cattle, meat byproducts; corn, sweet, kernel plus cob with husks removed; goat meat byproducts; hog, meat byproduct; horse, meat byproduct; milk; and sheep, meat byproduct, and by alphabetically adding the commodities corn, sweet, forage; corn sweet, stover, juneberry; lingonberry; pistachio; salal; and safflower.

■ ii. By removing the text from paragraph (b) and reserving the paragraph designation and heading.

■ The amended, added, and revised portions of § 180.412 read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Cattle, meat by-products	1.0	None
* *	* *	*
Corn, sweet, forage	3.0	None
Corn, sweet, kerenel plus cob with husks removed	0.4	None

Commodity	Parts per million	Expiration/ Revocation Date
Corn, sweet stover	3.5	None
* *	* *	*
Goat, meat by-products	1.0	None
* *	* *	*
Hog, meat by-products	1.0	None
* *	* *	*
Horse, meat by-products	1.0	None
* *	* *	*
Juneberry	5.0	None
* *	* *	*
Lingonberry	5.0	None
* *	* *	*
Milk	0.5	None
* *	* *	*
Pistachio	0.2	None
* *	* *	*
Salal	5.0	None
Safflower	15.0	None
* *	* *	*
Sheep, meat by-products	1.0	None
* *	* *	*

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 03–24562 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0256; FRL–7328–8]

Indian Meal Moth Granulosis Virus; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the Indian Meal Moth Granulosis Virus (IMMGV) in or on all food commodities when applied/used in accordance with approved label rates and good agricultural practices. AgriVir, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of IMMGV.

DATES: This regulation is effective September 29, 2003. Objections and requests for hearings, identified by docket identification number OPP–2003–0256, must be received on or before November 28, 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 IX. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 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–2003–0256. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of July 30, 2003 (68 FR 447804) (FRL–7319–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 3F6736) by AgriVir, LLC, 1901 L Street, NW., Suite 250, Washington, DC 20036. This notice included a summary of the petition prepared by the petitioner AgriVir, LLC. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1218 be amended by establishing an exemption from the requirement of a tolerance for residues of IMMGV.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for 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(c)(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 of the FFDCA (b)(2)(C) 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. . . . '' Additionally, section 408(b)(2)(D) of the FFDCA requires that 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 performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

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 and considered its validity, completeness, and reliability and the relationship of this information 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.

Based on the toxicology data cited and the limited exposure to humans and domestic animals, there is a reasonable certainty that no harm will result from aggregate exposure to IMMGV to the U.S. population including infants and children to residues of IMMGV when used as viral pest control agent to control the Indian Meal Moth on all food commodities. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of research, use and safety of testing baculoviruses which is documented in the public scientific literature (Refs. 1–5). IMMGV is a naturally occurring organism to which some environmental and dietary exposure is likely to be common for most individuals. The conclusion of safety is further supported by the lack of toxic or pathogenic effects on test animals at high doses (data submitted by the registrant, MRID numbers 453070–01, 450662–07, and 450662–08). Baculoviruses have been described in the scientific literature for approximately 40 years. In addition to their natural occurrence, these viruses have a long history of safe use as bioinsecticides. Baculoviruses have been studied extensively in both laboratory and field experiments, which have shown that the virus host range is limited to arthropods. IMMGV has been shown to be very restricted in its insect host range. No toxicological or pathogenic effects produced by the baculovirus itself, have been observed in mammals, birds, fish or plants. The lack of mammalian toxicity at high levels of exposure to IMMGV demonstrates the safety of the product at levels well above maximum possible exposure levels anticipated in the crops. There has been a significant amount of research performed on baculoviruses and numerous scientific references are available which describe the biology of these viruses, their host range, and their mode of action. Toxicity studies submitted in support of this tolerance exemption include the following:

1. *Acute oral toxicity/pathogenicity (453070–01).* Thirteen male (254–321 grams (g)) and 13 female (160–208g) albino rats were divided into three groups and treated with 0.1 milliliter (mL) of the test substance. Treatment was administered by oral gavage with at least 1 x 10^8 viral particles per animal. No deaths occurred in any of the test animals. Other than diarrhea during the first few hours following dosing, there were no other apparent clinical symptoms. Based upon the data there were no significant adverse effects reported upon doses of at least 1 x 10^8 viral capsules. The toxicity category was deemed Toxicity Category IV.

2. *In vitro mammalian cell viral infectivity in mammalian cells (450662–08).* Human WI–38 and WS1 cell cultures and African green monkey CV–1 cell cultures were exposed to 1 x 10^6 units of the test substance. The cell cultures were observed daily for 21 days following inoculation for virus induced cytopathic effects. The test preparation was shown to be highly infectious and cytopathic to the target Plodia interpunctella larva. No differences were seen between the virus treated nor the solvent treated control cell cultures with respect to any cytopathic endpoint at any time post-inoculation. Based on the data, there was no evidence that the virus could infect any of the three mammalian cell lines.

3. *In vitro mammalian cell viral induced cytotoxicity (450662–07).* Human WI–38 and WS1 cell cultures and African green monkey CV-1 cell cultures were exposed to 1 x 10^6 units of IMMGV technical (IMMGV) for 1 hour. The cell cultures were then washed, refed with virus-free medium, incubated for 8 days, fixed, stained and the number of colonies counted. The test preparation was shown to be highly infectious and cytopathic to the target Plodia interpunctella larva although analysis determined that the actual number of viral capsules used was only 42% of the target value. No differences were seen between the virus treated and the solvent treated control cell cultures with respect to cloning efficiency in any of the three cell lines. Based on the data, there was no evidence that the test substance was cytotoxic to any of the three mammalian cell lines.

4. *Acute eye irritation (450662–09).* The test substance was instilled in the eyes of four males and two female adult New Zealand albino rabbits at approximately 0.04 g/eye (~7.14 x 10^9 viral capsules). Animals were acclimated for 11 days and before treatment their eyes were checked for normalcy using ophthalmic fluorescein and an ultraviolet (UV) lamp. The right eye of each animal was treated and the other eye served as a control. No deaths occurred. Clinical signs noted included conjunctivitis, corneal opacity and iritis, all of which cleared within 4 days of treatment. The toxicity from this study was deemed Toxicity Category IV.

5. *Data waivers.* Data waivers were requested for the following studies:

i. *Acute dermal toxicity.* This study was waived based upon the lack of toxicity in animals dosed orally (453070–01) and more importantly cells inoculated with viral pest control agent (450662–07 and 450662–08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when innoculated with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed, thus,

providing a higher exposure scenario (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon inoculation with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal, inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the IMMGV is a characteristically large molecular entity and is therefore unable to penetrate intact skin. However, in the unlikely event that viral penetration does occur through contact with broken skin, the studies submitted by the registrant have demonstrated a lack of toxicity/pathogenicity and infectivity associated with IMMGV.

ii. *Acute inhalation toxicity*. This study was waived based upon the lack of toxicity in animals dosed orally (453070–01) and, more importantly cells inoculated with the viral pest control agent (450662–07 and 450662–08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure scenario (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute inhalation toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to use a dust mask as a further measure of safety.

iii. *Primary dermal irritation*. This study was waived based upon the lack of toxicity in animals dosed orally (453070–01) and, more importantly cells inoculated with viral pest control agent (450662–07 and 450662–08). Cell culture infectivity and cytoxicity assays demonstrated that there were no toxic effects to mammalian cell lines (human lung, human endothelial and primate renal cell lines) when infected with doses of IMMGV. Cell culture assays provide valuable information on the ability of the viral pest control agent to infect, replicate in, transform or cause toxicity in mammalian cell lines. Thus, this assay is the most likely indicator of evaluating the toxicity of a viral pest control agent. Unlike the oral, dermal and inhalation routes of exposure, these barriers (exposure conditions) do not exist in cell culture assays as the host cell is completely exposed thus providing a higher exposure potential (for exposure of body tissues, organs and systems). Cell culture studies which demonstrate no toxicity to mammalian cell lines upon infection with the viral pest control agent can therefore be used as an indicator in determining the probability of toxicity to the viral pest control agent via other routes of exposure (oral, dermal and inhalation). Therefore, this evaluation criteria along with the data submitted (referenced above) and the long history of safe use of baculoviruses provided the Agency with a scientific rationale to waive the requirement for an acute dermal toxicity study. In addition, the product labeling includes precautionary language for the pesticide handler to wear gloves as a further measure of safety.

iv. *Literature citations (450662–06)*. Information from the open scientific literature has been cited in support of the relative safety and lack of mammalian toxicity associated with baculoviruses, including the IMMGV. The IMMGV is very host-specific, it does not infect any host other than the Indian meal moth larvae and does not cross-infect any Lepidopteran or other insect. The range for the insect host is worldwide. Studies listed in the literature review provide information on the life cycle and mode of action of IMMGV such that it acts by pathogenicity, not a toxic mechanism. It presents no hazard potential to mammals and non-target species.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Because baculoviruses are naturally occurring organisms, there is a great likelihood for previous exposure for most, if not all individuals. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions resulting from exposure to IMMGV. The amount of product used will result in a negligible increase, if any, of virus exposure. In addition, even if there is a significant increase in exposure to the virus, the toxicity studies submitted by the registrant along with the extensive reports in the scientific literature indicating the safety of the viruses, suggest that there should not be any additional risk of adverse effects due to exposure to IMMGV.

2. *Drinking water exposure*. Because of the use site and amount of product that will be applied, potential non-occupational exposures in drinking water is negligible. Currently, there are no reports which show that IMMGV has been found in any drinking water. Baculoviruses occur naturally in soil and there is a low likelihood that they would survive passage through the soil to reach underground water (Ref. 1, MRID 450662–06). Even if the virus is able to reach ground water, it is highly unlikely that the viruses would survive municipal water treatment due to its inability to survive outside its host. Therefore, it is not likely there will be an increase of IMMGV in drinking water. In addition, because the virus host range is limited to the Indian meal moth, the results of the acute oral toxicity studies using a high dose of the virus, suggest that there will not be any adverse effects upon human consumption in the unlikely event any virus found its way into drinking water, therefore; the Agency has no drinking water exposure concerns.

B. Other Non-Occupational Exposure

Baculoviruses are naturally occurring viruses that have been described in the scientific literature for approximately 40 years. In addition to scientific research, there has been a long history of safe use of baculoviruses to control arthropods. Because the amount of virus which will be applied is small, it is not likely that there will be a significant increase in potential exposure. Any increase in virus titer is likely to be negligible at

most. Baculoviruses have been shown to have a host range limited to arthropods and the host range of this virus is even more restrictive than most baculoviruses (Ref. 1, MRID 450662–06). Therefore, even if there was an increase in exposure, there should not be any increase in potential human health effects.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to this or other baculovirus-containing products, the Agency is confident that there will not be cumulative effects from the registration of this product.

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population*. There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population from exposure to residues of IMMGV. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the long history of safe use of baculoviruses as bioinsecticides, the lack of mammalian toxicity associated with IMMGV, the limited host range of the virus and the inability of IMMGV to infect mammalian cell lines.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (MOE) (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 unless EPA determines that a different MOE will be safe for infants and children. MOEs are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that IMMGV is practically non-toxic to mammals, including infants and children and that they will consume only minimal, if any, residues of the microbial pesticide. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

As a result, EPA has not used a MOE approach to assess the safety of the IMMGV.

VIII. Other Considerations

A. Endocrine Disruptors

There are no reports or indications in the available scientific literature that suggests that Indian meal moth granulosis virus has caused or has the potential to cause adverse effects on the endocrine and/or immune systems of humans or animals. The virus host range is limited to the Indian meal moth, where it would be expected to affect the defense systems of the target insect pest. The target insect's response is not different from any animal's response to a disease agent. These suppositions are confirmed by the results of the mammailian toxicity tests cited above.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for the IMMGV.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels established for residues of the IMMGV.

IX. 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 the 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–2003–0256 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 November 28, 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 IX.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–2003–0256, 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).

X. References

1. Consigili, R.A., D.L., Russell and M.E. Wilson. 1986. The biochemistry and molecular biology of the granulosis virus that infects plodia interpunctella. Current Topics in Microbiology and Immunology 131:69–101.

2. Doller, G. 1985. The safety of insect virus as biological control agents. In ''Viral Insecticides for Biolocial Control'' (Eds. Maramorosch, K. and Sherman, H.G.), Academic Press, New York: 399.

3. Groner, A. 1986. Specificity and safety of baculoviruses. In ''The Biology of Baculoviruses Vol. I: Biological Properties and Molecular Biology'' (Eds. Granados, R.D. and Federici, B.A.), CRC Press, Boca Raton, Florida: 177–202).

4. Heimpel, A.M. 1971. Safety of insect pathogens for man and vertebrates. In ''Microbial Control of Insects and Mites'' (Eds. Burges, H.D. and Hussey, N.W.), Academic Press, New York: 469–489.

5. Hunter, D.K. 1970. Pathogenicity of a granulosis virus of the Indian meal moth. J. Invertebr. Pathol. 16:339–341.

XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement 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 exemption 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.

XII. 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: September 22, 2003.

Janet L. Andersen

Director, Biopesticides and Pollution Prevention 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 180.1218 is revised to read as follows:

§ 180.1218 Indian Meal Moth Granulosis Virus; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide Indian Meal Moth Granulosis Virus when used in or on all food commodities.

[FR Doc. 03–24563 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7563–8]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 12 new sites to the NPL; all to the General Superfund Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 29, 2003.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on April 30, 2003 (68 FR 23077).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the

boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of September 10, 2003, the Agency has deleted 273 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 10, 2003, EPA has deleted 39 portions of 35 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

As of September 10, 2003, there are a total of 860 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket identification number; SFUND–2003–0009. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II D.)

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—September 2003.'' This document is also posted on EPA's Internet site at *http://www.epa.gov/superfund/sites/npl/current.htm.*

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket

are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

James R. Wade, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3094.

Tara Martich, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–0039.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (*see* contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds 12 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 12 sites in the General Superfund Section. Sites in the tables are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	AMCO Chemical	Oakland
CO	Captain Jack Mill	Ward
IL	Matthiessen and Hegeler Zinc Company	LaSalle
MO	Madison County Mines	Fredericktown
MO	Newton County Mine Tailings	Newton County
NC	Ram Leather Care	Charlotte
NH	Troy Mills Landfill	Troy
NJ	Rolling Knolls Landfill	Chatham Township
OH	Lammers Barrel	Beavercreek
OR	Harbor Oil	Portland
TX	Conroe Creosoting Company	Conroe
TX	Jones Road Ground Water Plume	Harris County

Number of Sites Added to the General Superfund Section: 12.

B. Status of NPL

With the 12 new sites added to the NPL in today's final rule; the NPL now contains 1,245 final sites; 1,087 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, there are 54 sites proposed and awaiting final agency action, 48 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,299. (These numbers reflect the status of sites as of September 10, 2003. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The Matthiessen and Hegeler Zinc Company site was proposed on June 14, 2001 (66 FR 32287). The Lammers Barrel and Harbor Oil sites were proposed on September 5, 2002 (67 FR 56794). All remaining sites were proposed on April 30, 2003 (68 FR 23094).

EPA responded to all relevant comments received on the following sites: Matthiessen and Hegeler Zinc, Lammers Barrel, Harbor Oil, Madison County Mines, and Jones Road Ground Water Plume sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—September 2003.''

EPA received comments on the AMCO Chemical site that relate to suggested cleanup approaches and community involvement at the site, rather than the underlying basis for the NPL listing and therefore are not included or addressed in the ''Support Document for the Revised National Priorities List Final Rule—September 2003.'' EPA Region 9 will work with the commenters on their concerns.

For the remaining sites, EPA received no comments or only comments supporting the listing of the sites to the NPL and therefore, EPA is placing them on the final NPL at this time.

IV. Executive Order 12866

A. What Is Executive Order 12866?

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

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

B. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

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

B. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

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 has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995

(describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

XIV. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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.''

B. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It 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 final rule.

XV. Executive Order 13211

A. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is This Rule Subject to Executive Order 13211?

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

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 2003.

Barry N. Breen,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 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.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
CA	AMCO Chemical	Oakland.	
*	*	*	*
CO	Captain Jack Mill	Ward.	
*	*	*	*
IL	Matthiessen and Hegeler Zinc Company.	LaSalle.	
*	*	*	*
MO	Madison County Mines	Fredericktown.	
*	*	*	*
MO	Newton County Mine Tailings	Newton County.	
*	*	*	*
NC	Ram Leather Care	Charlotte.	
*	*	*	*
NH	Troy Mills Landfill	Troy.	
*	*	*	*
NJ	Rolling Knolls Landfill	Chatham Township.	
*	*	*	*
OH	Lammers Barrel	Beavercreek.	
*	*	*	*
OR	Harbor Oil	Portland.	
*	*	*	*
TX	Conroe Creosoting Company	Conroe.	
*	*	*	*
TX	Jones Road Ground Water Plume	Harris County.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 03–24406 Filed 9–26–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 411, 413, 440, 483, 488, and 489

[CMS–1469–CN]

RIN 0938–AL90

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 4, 2003, entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities.''

EFFECTIVE DATE: This correction is effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jeanette Kranacs, (410) 786–9385, or Sheila Lambowitz, (410) 786–7605.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–19677 of August 4, 2003 (68 FR 46036), there were a number of technical errors that are identified and corrected in the ''Correction of Errors'' section below. The provisions in this correction document are effective as if they had been included in the document published August 4, 2003. Accordingly, the corrections are effective October 1, 2003.

In previous years, we have issued correction notices with respect to payment rates under the prospective payment system (PPS) for skilled nursing facilities (SNFs), reflecting minor adjustments to the hospital wage index relating to specific Metropolitan Statistical Areas (MSAs). For example, for fiscal year (FY) 2003, we issued a correction notice (December 27, 2002, 67 FR 79123) to update two MSA wage indexes. We did not recalculate the SNF budget neutrality factor as a result of these minor revisions.

However, it was recently determined that computational errors in the hospital wage index calculation process for FY 2004 were of sufficient magnitude to affect all of the published PPS payment rates for inpatient hospital services. A description of those computational errors will be included in a notice specific to the hospital inpatient PPS. As we explained in the August 4, 2003 final rule, the SNF wage index values reflect the wage data used in the FY 2004 inpatient hospital PPS rates, and therefore, we believe it would be appropriate to incorporate corrections to the inpatient hospital wage index. The scope of the resulting corrections to the hospital wage index will, in turn, necessitate revising the budget neutrality factor for the SNF PPS for FY 2004 as well. We note that correcting these computational errors is a purely

administrative function that does not result in any change of policy or payment methodology.

Accordingly, in this correction document, we are republishing the SNF PPS payment rate tables (that is, Tables 1 through 9, inclusive) that appeared in the August 4, 2003 final rule, in order to show the corrected rates. (We note that we are not republishing Table 10 (FY 2004 Labor-Related Share (68 FR 46057)), as this table solely involves the relative importance of the various components of the labor-related share, and those figures have not changed from those that appeared in the final rule.) Further, we are republishing Table 11, which displays the projected impact of the FY 2004 SNF PPS payment update, including the variation in impact by region and by certain other facility characteristics. We note that the effect of the corrections being made in this notice is solely distributional in nature and, accordingly, that there is no change in the estimated aggregate expenditures for FY 2004 as set forth in the August 4, 2003 final rule. A further discussion of the projected impact of the FY 2004 SNF PPS payment update can be found in the August 4, 2003 final rule (68 FR 46067). In addition, the FY 2004 budget neutrality factor of 1.005 that appeared in the final rule (68 FR 46047) is hereby revised to 1.0016.

Finally, in the August 4, 2003 final rule (68 FR 46060), we added two radiopharmaceuticals, Zevalin and Bexxar, to the list of chemotherapy drugs that are excluded from consolidated billing (and, thus, are separately billable to Part B when furnished to a SNF resident during a covered Part A stay). We note that Healthcare Common Procedure Coding System (HCPCS) coding for Bexxar is currently in the process of being developed. Further, while the final rule identified HCPCS codes A9522 and A9523 for Zevalin, we note that the outpatient hospital PPS currently uses HCPCS codes G0273 and G0274 for Zevalin instead, and that further revision of these particular codes is possible in the near future. As we stated in the final rule, the consolidated billing exclusions will appear in a Consolidated Billing Annual Update Program Memorandum that we will issue at the end of CY 2003, and will be effective as of January 1, 2004 (68 FR 46059). Accordingly, we are clarifying as an interpretive matter that the HCPCS codes to be utilized in connection with Bexxar and Zevalin include any successor codes that may replace the codes currently listed in the regulation. Such successor codes would be disseminated through program instructions. Once HCPCS coding has been developed for Bexxar (and has been definitively established for Zevalin), we will make revisions, as appropriate, to the particular codes that appear in the regulations text at § 411.15(p)(2)(xii) and § 489.20(s)(12).

II. Correction of Errors

In FR Doc. 03–19677 of August 4, 2003 (68 FR 46036), make the following corrections:

Corrections to Preamble

1. On page 46040, Tables 1 and 2 are revised to read as follows:

TABLE 1.—FY 2004 UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$129.52	$97.56	$12.85	$66.10

TABLE 2.—FY 2004 UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$123.74	$112.50	$13.72	$67.33

2. On pages 46042 through 46043, Table 3 is revised to read as follows:

BILLING CODE 4120–01–P

Table 3
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Compo-nent	Therapy Compo-nent	Non-case Mix Therapy Comp	Non-case Mix Compo-nent	Total Rate
RUC	1.30	2.25	168.38	219.51		66.10	453.99
RUB	0.95	2.25	123.04	219.51		66.10	408.65
RUA	0.78	2.25	101.03	219.51		66.10	386.64
RVC	1.13	1.41	146.36	137.56		66.10	350.02
RVB	1.04	1.41	134.70	137.56		66.10	338.36
RVA	0.81	1.41	104.91	137.56		66.10	308.57
RHC	1.26	0.94	163.20	91.71		66.10	321.01
RHB	1.06	0.94	137.29	91.71		66.10	295.10
RHA	0.87	0.94	112.68	91.71		66.10	270.49
RMC	1.35	0.77	174.85	75.12		66.10	316.07
RMB	1.09	0.77	141.18	75.12		66.10	282.40
RMA	0.96	0.77	124.34	75.12		66.10	265.56
RLB	1.11	0.43	143.77	41.95		66.10	251.82
RLA	0.80	0.43	103.62	41.95		66.10	211.67
SE3	1.70		220.18		12.85	66.10	299.13
SE2	1.39		180.03		12.85	66.10	258.98
SE1	1.17		151.54		12.85	66.10	230.49
SSC	1.13		146.36		12.85	66.10	225.31
SSB	1.05		136.00		12.85	66.10	214.95
SSA	1.01		130.82		12.85	66.10	209.77
CC2	1.12		145.06		12.85	66.10	224.01
CC1	0.99		128.22		12.85	66.10	207.17
CB2	0.91		117.86		12.85	66.10	196.81
CB1	0.84		108.80		12.85	66.10	187.75
CA2	0.83		107.50		12.85	66.10	186.45
CA1	0.75		97.14		12.85	66.10	176.09
IB2	0.69		89.37		12.85	66.10	168.32
IB1	0.67		86.78		12.85	66.10	165.73
IA2	0.57		73.83		12.85	66.10	152.78
IA1	0.53		68.65		12.85	66.10	147.60
BB2	0.68		88.07		12.85	66.10	167.02

BB1	0.65		84.19		12.85	66.10	163.14
BA2	0.56		72.53		12.85	66.10	151.48
BA1	0.48		62.17		12.85	66.10	141.12
PE2	0.79		102.32		12.85	66.10	181.27
PE1	0.77		99.73		12.85	66.10	178.68
PD2	0.72		93.25		12.85	66.10	172.20
PD1	0.70		90.66		12.85	66.10	169.61
PC2	0.65		84.19		12.85	66.10	163.14
PC1	0.64		82.89		12.85	66.10	161.84
PB2	0.51		66.06		12.85	66.10	145.01
PB1	0.50		64.76		12.85	66.10	143.71
PA2	0.49		63.46		12.85	66.10	142.41
PA1	0.46		59.58		12.85	66.10	138.53

3. On Pages 46044 through 46045, Table 4 is revised to read as follows:

Table 4

CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Comp-onent	Therapy Compo-nent	Non-case Mix Therapy Comp	Non-case Mix Compo-nent	Total Rate
RUC	1.30	2.25	160.86	253.13		67.33	481.32
RUB	0.95	2.25	117.55	253.13		67.33	438.01
RUA	0.78	2.25	96.52	253.13		67.33	416.98
RVC	1.13	1.41	139.83	158.63		67.33	365.79
RVB	1.04	1.41	128.69	158.63		67.33	354.65
RVA	0.81	1.41	100.23	158.63		67.33	326.19
RHC	1.26	0.94	155.91	105.75		67.33	328.99
RHB	1.06	0.94	131.16	105.75		67.33	304.24
RHA	0.87	0.94	107.65	105.75		67.33	280.73
RMC	1.35	0.77	167.05	86.63		67.33	321.01
RMB	1.09	0.77	134.88	86.63		67.33	288.84
RMA	0.96	0.77	118.79	86.63		67.33	272.75
RLB	1.11	0.43	137.35	48.38		67.33	253.06
RLA	0.80	0.43	98.99	48.38		67.33	214.70
SE3	1.70		210.36		13.72	67.33	291.41
SE2	1.39		172.00		13.72	67.33	253.05
SE1	1.17		144.78		13.72	67.33	225.83
SSC	1.13		139.83		13.72	67.33	220.88
SSB	1.05		129.93		13.72	67.33	210.98
SSA	1.01		124.98		13.72	67.33	206.03
CC2	1.12		138.59		13.72	67.33	219.64
CC1	0.99		122.50		13.72	67.33	203.55
CB2	0.91		112.60		13.72	67.33	193.65
CB1	0.84		103.94		13.72	67.33	184.99
CA2	0.83		102.70		13.72	67.33	183.75
CA1	0.75		92.81		13.72	67.33	173.86
IB2	0.69		85.38		13.72	67.33	166.43
IB1	0.67		82.91		13.72	67.33	163.96
IA2	0.57		70.53		13.72	67.33	151.58
IA1	0.53		65.58		13.72	67.33	146.63

BB2	0.68		84.14		13.72	67.33	165.19
BB1	0.65		80.43		13.72	67.33	161.48
BA2	0.56		69.29		13.72	67.33	150.34
BA1	0.48		59.40		13.72	67.33	140.45
PE2	0.79		97.75		13.72	67.33	178.80
PE1	0.77		95.28		13.72	67.33	176.33
PD2	0.72		89.09		13.72	67.33	170.14
PD1	0.70		86.62		13.72	67.33	167.67
PC2	0.65		80.43		13.72	67.33	161.48
PC1	0.64		79.19		13.72	67.33	160.24
PB2	0.51		63.11		13.72	67.33	144.16
PB1	0.50		61.87		13.72	67.33	142.92
PA2	0.49		60.63		13.72	67.33	141.68
PA1	0.46		56.92		13.72	67.33	137.97

4. On page 46047, in the third column; in the first paragraph, the budget neutrality factor of ''1.005'' that appears in the penultimate sentence is revised to read ''1.0016''.

5. On page 46048, Table 5 is revised to read as follows:

Table 5

Case-Mix Adjusted Federal Rates for Urban SNFs By Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	453.99	346.72	107.27
RUB	408.65	312.09	96.56
RUA	386.64	295.28	91.36
RVC	350.02	267.32	82.70
RVB	338.36	258.41	79.95
RVA	308.57	235.66	72.91
RHC	321.01	245.16	75.85
RHB	295.10	225.37	69.73
RHA	270.49	206.58	63.91
RMC	316.07	241.39	74.68
RMB	282.40	215.67	66.73
RMA	265.56	202.81	62.75
RLB	251.82	192.32	59.50
RLA	211.67	161.66	50.01
SE3	299.13	228.45	70.68
SE2	258.98	197.79	61.19
SE1	230.49	176.03	54.46
SSC	225.31	172.07	53.24
SSB	214.95	164.16	50.79
SSA	209.77	160.21	49.56
CC2	224.01	171.08	52.93
CC1	207.17	158.22	48.95
CB2	196.81	150.31	46.50
CB1	187.75	143.39	44.36
CA2	186.45	142.40	44.05
CA1	176.09	134.48	41.61
IB2	168.32	128.55	39.77
IB1	165.73	126.57	39.16
IA2	152.78	116.68	36.10
IA1	147.60	112.73	34.87
BB2	167.02	127.56	39.46
BB1	163.14	124.59	38.55
BA2	151.48	115.69	35.79
BA1	141.12	107.78	33.34
PE2	181.27	138.44	42.83
PE1	178.68	136.46	42.22
PD2	172.20	131.51	40.69
PD1	169.61	129.53	40.08
PC2	163.14	124.59	38.55
PC1	161.84	123.60	38.24
PB2	145.01	110.75	34.26
PB1	143.71	109.75	33.96
PA2	142.41	108.76	33.65
PA1	138.53	105.80	32.73

6. On page 46049, Table 6 is revised to read as follows:

Table 6

Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	481.32	367.59	113.73
RUB	438.01	334.52	103.49
RUA	416.98	318.46	98.52
RVC	365.79	279.36	86.43
RVB	354.65	270.85	83.80
RVA	326.19	249.12	77.07
RHC	328.99	251.26	77.73
RHB	304.24	232.35	71.89
RHA	280.73	214.40	66.33
RMC	321.01	245.16	75.85
RMB	288.84	220.59	68.25
RMA	272.75	208.30	64.45
RLB	253.06	193.27	59.79
RLA	214.70	163.97	50.73
SE3	291.41	222.56	68.85
SE2	253.05	193.26	59.79
SE1	225.83	172.47	53.36
SSC	220.88	168.69	52.19
SSB	210.98	161.13	49.85
SSA	206.03	157.35	48.68
CC2	219.64	167.74	51.90
CC1	203.55	155.46	48.09
CB2	193.65	147.89	45.76
CB1	184.99	141.28	43.71
CA2	183.75	140.33	43.42
CA1	173.86	132.78	41.08
IB2	166.43	127.11	39.32
IB1	163.96	125.22	38.74
IA2	151.58	115.76	35.82
IA1	146.63	111.98	34.65
BB2	165.19	126.16	39.03
BB1	161.48	123.33	38.15
BA2	150.34	114.82	35.52
BA1	140.45	107.26	33.19
PE2	178.80	136.55	42.25
PE1	176.33	134.67	41.66
PD2	170.14	129.94	40.20
PD1	167.67	128.05	39.62
PC2	161.48	123.33	38.15
PC1	160.24	122.38	37.86
PB2	144.16	110.10	34.06
PB1	142.92	109.15	33.77
PA2	141.68	108.20	33.48
PA1	137.97	105.37	32.60

7. On Pages 46050 through 46056, Table 7 is revised to read as follows:

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7627
Taylor, TX	
0060 Aguadilla, PR	0.4306
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9246
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0863
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8489
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9300
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8019
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9721
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.8806
Blair, PA	
0320 Amarillo, TX	0.8986
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2216
Anchorage, AK	
0440 Ann Arbor, MI	1.1074
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8090
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9035
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4155
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9720
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9818
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0130

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.0795
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8494
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9625
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9609
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9810
Kern, CA	
0720 Baltimore, MD	0.9919
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9904
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.2956
Barnstable, MA	
0760 Baton Rouge, LA	0.8406
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8424
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1757
Whatcom, WA	
0870 Benton Harbor, MI	0.8871
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1692
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8961

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.9029
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8428
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9212
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7965
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8662
Monroe, IN	
1040 Bloomington-Normal, IL	0.8832
McLean, IL	
1080 Boise City, ID	0.9209
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1233
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0049
Boulder, CO	
1145 Brazoria, TX	0.8137
Brazoria, TX	
1150 Bremerton, WA.	
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	1.0303
Cameron, TX	
1260 Bryan-College Station, TX	0.9019
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9604
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9704
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4158
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9071
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9095
Natrona, WY	
1360 Cedar Rapids, IA	0.8874
Linn, IA	
1400 Champaign-Urbana, IL	0.9907

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9332
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8880
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9760
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0025
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9086
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8796
Laramie, WY	
1600 Chicago, IL	1.0892
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0193
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9413
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8244
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9671
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9833
El Paso, CO	
1740 Columbia, MO	0.8695
Boone, MO	
1760 Columbia, SC	0.8902
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8694
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9648
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8521
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1516
Benton, OR	
1900 Cumberland, MD–WV	0.8200
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9974
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.9035
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8985
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9518
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9078
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8828
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8161
Macon, IL	
2080 Denver, CO	1.0837
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9106
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0101
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7741
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9805
Kent, DE	
2200 Dubuque, IA	0.8886
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0171
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0934
Dutchess, NY	
2290 Eau Claire, WI	0.9064
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9196
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9783
Elkhart, IN	
2335 Elmira, NY	0.8377
Chemung, NY	
2340 Enid, OK	0.8559
Garfield, OK	
2360 Erie, PA	0.8601
Erie, PA	
2400 Eugene-Springfield, OR	1.1456
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8429
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9797
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8986
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8396
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.1333
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0858
Genesee, MI	
2650 Florence, AL	0.7747
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8709
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0108
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0163
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9816
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0008
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8424

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8966
Okaloosa, FL	
2760 Fort Wayne, IN	0.9585
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9359
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0094
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8206
Etowah, AL	
2900 Gainesville, FL	0.9693
Alachua, FL	
2920 Galveston-Texas City, TX	0.9279
Galveston, TX	
2960 Gary, IN	0.9410
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8475
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8622
Wayne, NC	
2985 Grand Forks, ND–MN	0.8636
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9633
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9469
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8809
Cascade, MT	
3060 Greeley, CO	0.9372
Weld, CO	
3080 Green Bay, WI	0.9461
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9166
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9098
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9335
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9172
Washington, MD	
3200 Hamilton-Middletown, OH	0.9214
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9164
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1555
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7307
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9242
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1098
Honolulu, HI	
3350 Houma, LA	0.7748
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9834
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9595
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.9245
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9916
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9548
Johnson, IA	
3520 Jackson, MI	0.8986
Jackson, MI	
3560 Jackson, MS	0.8357
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8984
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9529
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8544
Onslow, NC	
3610 Jamestown, NY	0.7762
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9282
Rock, WI	
3640 Jersey City, NJ	1.1115
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8253
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8158
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7794
Craighead, AR	
3710 Joplin, MO	0.8681
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0500
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.0419
Kankakee, IL	
3760 Kansas City, KS–MO	0.9715
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9761
Kenosha, WI	
3810 Killeen-Temple, TX	0.9159
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8820
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9045

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9247
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8189
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8584
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7841
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8811
Polk, FL	
4000 Lancaster, PA	0.9282
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9714
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8091
Webb, TX	
4100 Las Cruces, NM	0.8688
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1528
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8677
Douglas, KS	
4200 Lawton, OK	0.8267
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9383
Androscoggin, ME	
4280 Lexington, KY	0.8685
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9522
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	1.0033
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8923
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.9113
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1795
Los Angeles, CA	
4520 Louisville, KY–IN	0.9242
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8272
Lubbock, TX	
4640 Lynchburg, VA	0.9134
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8953
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0264
Dane, WI	
4800 Mansfield, OH	0.9180
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4795
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8381
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0772
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9776
Brevard, FL	
4920 Memphis, TN–AR–MS	0.9009
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9690
Merced, CA	
5000 Miami, FL	0.9894
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1366
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9988
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN–WI	1.1001
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.8718
Missoula, MT	
5160 Mobile, AL	0.7994
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1275
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0956
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7922
Ouachita, LA	
5240 Montgomery, AL	0.7907
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.8775
Delaware, IN	
5330 Myrtle Beach, SC	0.9112
Horry, SC	
5345 Naples, FL	0.9790
Collier, FL	
5360 Nashville, TN	0.9855
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3140
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2385
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1631
New London, CT	
5560 New Orleans, LA	0.9174
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4018

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1518
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1509
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8619
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4921
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9728
Marion, FL	
5800 Odessa-Midland, TX	0.9327
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8984
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0963
Thurston, WA	
5920 Omaha, NE–IA	0.9745
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1372
Orange, CA	
5960 Orlando, FL	0.9654
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8374
Daviess, KY	
6015 Panama City, FL	0.8202
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8039

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8707
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8734
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0883
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	1.0129
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7865
Jefferson, AR	
6280 Pittsburgh, PA	0.8901
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0276
Berkshire, MA	
6340 Pocatello, ID	0.9042
Bannock, ID	
6360 Ponce, PR	0.4708
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9949
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1213
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0977
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9976
Utah, UT	
6560 Pueblo, CO	0.8778
Pueblo, CO	
6580 Punta Gorda, FL	0.9510
Charlotte, FL	
6600 Racine, WI	0.8814
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9959

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8806
Pennington, SD	
6680 Reading, PA	0.9133
Berks, PA	
6690 Redding, CA	1.1352
Shasta, CA	
6720 Reno, NV	1.0682
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0609
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9349
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1341
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8700
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1739
Olmsted, MN	
6840 Rochester, NY	0.9430
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9666
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9076
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1845
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	1.0032
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9506

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9757
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9033
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0482
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4339
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9913
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8535
Tom Green, TX	
7240 San Antonio, TX	0.8870
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1147
San Diego, CA	
7360 San Francisco, CA	1.4514
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4626
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4909
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1429
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0441
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.2942
Santa Cruz, CA	
7490 Santa Fe, NM	1.0653
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2877
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9964
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9472
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre—Hazleton, PA	0.8412
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1562
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7751
Mercer, PA	
7620 Sheboygan, WI	0.8624
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9700
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9083
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8993
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9309
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9821
St. Joseph, IN	
7840 Spokane, WA	1.0901
Spokane, WA	
7880 Springfield, IL	0.8944
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8457
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0543
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8740
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8398

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0404
San Joaquin, CA	
8140 Sumter, SC	0.8243
Sumter, SC	
8160 Syracuse, NY	0.9412
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1116
Pierce, WA	
8240 Tallahassee, FL	0.8520
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8325
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8150
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9381
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9108
Shawnee, KS	
8480 Trenton, NJ	1.0517
Mercer, NJ	
8520 Tucson, AZ	0.8981
Pima, AZ	
8560 Tulsa, OK	0.9185
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8212
Tuscaloosa, AL	
8640 Tyler, TX	0.9404
Smith, TX	
8680 Utica-Rome, NY	0.8403
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3377
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1064
Ventura, CA	
8750 Victoria, TX	0.8184
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0405
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9794
Tulare, CA	
8800 Waco, TX	0.8394

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0904
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8366
Black Hawk, IA	
8940 Wausau, WI	0.9692
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9798
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7494
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9238
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8341
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8158

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.0882
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9563
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0372
Yakima, WA	
9270 Yolo, CA	0.9204
Yolo, CA	
9280 York, PA	0.9119
York, PA	
9320 Youngstown-Warren, OH	0.9214
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0196
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8895
Yuma, AZ	

8. On Page 46056, Table 8 is revised as follows:

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7492
Alaska	1.1886
Arizona	0.9270
Arkansas	0.7734
California	1.0027
Colorado	0.9328
Connecticut	1.2183
Delaware	0.9557
Florida	0.8870
Georgia	0.8595
Guam	0.9611
Hawaii	0.9958
Idaho	0.8974
Illinois	0.8254
Indiana	0.8824

TABLE 8.—WAGE INDEX FOR RURAL AREAS—Continued

Rural area	Wage index
Iowa	0.8416
Kansas	0.8034
Kentucky	0.7973
Louisiana	0.7458
Maine	0.8812
Maryland	0.9125
Massachusetts	1.0432
Michigan	0.8884
Minnesota	0.9330
Mississippi	0.7778
Missouri	0.7892
Montana	0.8800
Nebraska	0.8822
Nevada	0.9806
New Hampshire	1.0030
New Jersey[1]	.....
New Mexico	0.8270
New York	0.8526
North Carolina	0.8458
North Dakota	0.7778
Ohio	0.8820
Oklahoma	0.7537
Oregon	0.9994
Pennsylvania	0.8378
Puerto Rico	0.4018
Rhode Island[1]	.....
South Carolina	0.8498
South Dakota	0.8195
Tennessee	0.7886
Texas	0.7780
Utah	0.8974
Vermont	0.9307
Virginia	0.8498
Virgin Islands	0.7195
Washington	1.0388
West Virginia	0.8018
Wisconsin	0.9304
Wyoming	0.9110

[1] All counties within the State are classified urban.

9. On Page 46057, in the second column, in the first line, ''$20,379.'' is revised to read ''$20,371.''

10. On Page 46057, Table 9 is revised to read as follows:

TABLE 9.—SNF XYZ: LOCATED IN STATE COLLEGE, PA

[Wage Index: 0.8740]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adjustment	Medi-care days	Payment
RVC	$267.32	0.8740	$233.64	$82.70	$316.34	*$337.53	14	$4,725
RHA	$206.58	0.8740	$180.55	$63.91	$244.46	*$260.84	16	$4,173
SSC	$172.07	0.8740	$150.39	$53.24	$203.63	**$244.36	30	$7,331
IA2	$116.68	0.8740	$101.98	$36.10	$138.03	$138.08	30	$4,142
Total	.....	.....	.....	.....	.....	.....	90	$20,371

*Reflects a 6.7 percent adjustment from section 314 of the BIPA.
**Reflects a 20 percent adjustment from section 101(a) of the BBRA.

Table 11

Projected Impact of FY 2004 Update to the SNF PPS

	Number of facilities	Wage Index Change	Total FY 2004 change
Total	13,944	0.0%	6.4%
Urban	9,485	-0.1%	6.3%
Rural	4,459	0.5%	6.9%
Hospital based urban	1,049	-0.1%	6.3%
Freestanding urban	7,885	-0.1%	6.3%
Hospital based rural	660	0.4%	6.8%
Freestanding rural	3,500	0.5%	6.9%
Urban by region			
New England	911	0.1%	6.5%
Middle Atlantic	1,469	-0.6%	5.7%
South Atlantic	1,522	0.1%	6.5%
East North Central	1,823	-0.5%	5.8%
East South Central	410	0.4%	6.8%
West North Central	662	0.4%	6.8%
West South Central	847	0.1%	6.5%
Mountain	413	0.8%	7.2%
Pacific	1,422	0.1%	6.5%
Rural by region			
New England	129	-0.2%	6.1%
Middle Atlantic	238	-0.4%	5.9%
South Atlantic	627	0.3%	6.7%
East North Central	845	0.8%	7.2%
East South Central	479	-0.3%	6.0%
West North Central	1,045	1.6%	8.1%
West South Central	605	-0.2%	6.1%
Mountain	303	1.2%	7.6%
Pacific	188	0.4%	6.8%
Ownership			
Government	701	0.0%	6.4%
Proprietary	8,839	0.0%	6.4%
Voluntary	3,514	-0.1%	6.3%

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. We can also waive the 30-day delayed effective date of the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

We find it unnecessary to undertake notice-and-comment rulemaking because this notice merely provides technical corrections to the regulations. We are not changing our payment methodology, but rather, are simply implementing correctly the payment methodology that we previously proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology being used to calculate wage indexes, additional comment would be unnecessary.

Further, it would be impracticable at this point in time either to solicit additional comments or to delay the effective date of these changes beyond October 1, 2003. The Social Security Act, in subparagraphs (G) and (H) of section 1888(e)(4), requires the updated SNF PPS rates to be in place at the beginning of each Federal fiscal year. Since the fiscal year begins on October 1, 2003, it is imperative that we ensure that the correct rates are in place and effective by October 1, 2003, and it would not have been possible to publish a notice and receive comments on it in the brief period of time between discovering our error and the October 1, 2003 effective date for the updated SNF PPS rates.

Finally, we believe that engaging in notice and comment prior to making these corrections or delaying the effective date beyond October 1, 2003 would be contrary to the public interest. As a matter of good public policy, the rates used in the SNF PPS should not be based on wage indexes that we now know were miscalculated. The public interest is served by ensuring that the rates used in the SNF PPS are correct and that such rates are in effect for the entire fiscal year. Thus, it would be contrary to the public interest to delay implementing such corrected rates in order either to engage in notice-and-comment rulemaking or to provide for a 30-day delay in the effective date. Therefore, we find good cause to waive notice-and-comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 24, 2003.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 03–24549 Filed 9–26–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 03–190]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Clarification and waiver.

SUMMARY: This document clarifies that captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS), and that eligible providers of such service are eligible to recover their costs in accordance with section 225 of the Communications Act. This document also clarifies that certain TRS mandatory minimum standards do not apply to captioned telephone VCO service, and waives other TRS mandatory standards for captioned telephone VCO service, for all current and future captioned telephone VCO service providers, for the same period of time indicated herein, beginning on the date of release of this *Declaratory Ruling.*

DATES: Effective August 1, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comment on the information collection contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *Janet.Sievert@fcc.gov.*

SUPPLEMENTARY INFORMATION: This *Declaratory Ruling* contains new and/or modified collections subject to the PRA of 1995, Pub. L. 104–13. These will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and/or modified information collection(s) contained in this proceeding. This is a summary of the Commission's *Declaratory Ruling*, adopted July 25, 2003, released August 1, 2003. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Declaratory Ruling* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Paperwork Reduction Act

The *Declaratory Ruling* contains either new and/or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Declaratory Ruling* as required by the PRA of 1995, Pub. L. 104–13. Public and agency comments are due November 28, 2003.

Synopsis

In this *Declaratory Ruling*, the Commission responds to a *Petition for Clarification* filed by Ultratec, Inc. (Ultratec), requesting that the Commission clarify that captioned telephone service, which Ultratec calls CapTel, an enhanced VCO service, is a type of TRS and eligible for

reimbursement from the Interstate TRS Fund under the TRS rules. TRS enables persons with hearing and speech disabilities to communicate by telephone with a hearing person through a TRS facility. 47 U.S.C. 225. TRS facilities have special equipment and are staffed by communications assistants (CA) who relay conversations between persons who use text telecommunications devices and persons who communicate by voice. In a traditional TRS call, the caller uses a text telephone (TTY) to dial the telephone number of the local TRS facility. For the TTY user, the first step—the inbound call to the TRS facility—is functionally equivalent to receiving a dial tone. The CA, in turn, places an outbound voice call from the TRS facility to the called party. The CA serves as the link in the conversation, converting all typed TTY messages from the TTY user into voice messages, and all voice messages from the called party into typed messages for the TTY user. *See* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00–56, 15 FCC Rcd 5140 at paragraph 2 (2000); published at 65 FR 38432, June 21, 2000 (*Improved TRS Report and Order*). The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. We refer to ''traditional TRS calls'' as those TRS calls accomplished via text-to-voice or voice-to-text, with text provided via TTY. Such calls are provided through the public switched telephone network (PSTN). There are several types of traditional TRS calls, including VCO. Utratec's captioned telephone VCO service is provided through the PSTN using specialized customer premises equipment (CPE) and Ultratec's proprietary technology. Ultratec's captioned telephone service uses a telephone that looks similar to a traditional telephone but also has a text display that allows the user, on one standard telephone line, to both listen to the other party speak and simultaneously read captions of what the other party is saying. This way, a typical user of this service who has the ability to speak and some residual hearing, can both listen to what is said over the telephone and read captions for clarification. A CA using specially developed voice recognition technology generates the captions. This *Declaratory Ruling* finds that captioned telephone VCO service is a type of TRS, and that eligible providers of such service are eligible to recover their costs in accordance with section 225 of the Communications Act.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), 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**.'' 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). 15 U.S.C. 632.

This *Declaratory Ruling* addresses a Petition for Clarification (*Petition*) filed by Ultratec, Inc. (Ultratec), on April of 2002. Ultratec, *Petition for Clarification Provision of Cost Recovery for CapTel, an Enhanced VCO Service* filed April 12, 2002. This *Petition* requests that the Commission clarify that captioned telephone service is a form of VCO TRS and is eligible for reimbursement from the Interstate TRS Fund. The Commission sought comments on the Ultratec *Petition* in a Public Notice. *Pleading Cycle Established for Comments on Petition for Clarification on the Provision of and Cost Recovery for Captioned Telephone as an Improved Voice Carry Over Service for Telecommunications Relay Service*, Public Notice, 17 FCC Rcd 11,933 (2002); published at 67 FR 48415, July 24, 2002. As a result of the Ultratec *Petition* and filed public comments, the Commission is issuing this *Declaratory Ruling*, which will allow Ultratec and any other provider of captioned telephone VCO service to recover its costs of providing interstate captioned telephone service from the Interstate TRS Fund.

As noted in paragraph 22 of the *Declaratory Ruling*, this item imposes a regulatory burden on the Interstate TRS Fund Administrator, requiring it to pay eligible providers of captioned telephone service the costs of providing interstate service. The Interstate TRS Fund is a not-for-profit organization, and therefore is a ''small organization.'' A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration). Because the Interstate TRS Fund is the only entity affected by the *Declaratory Ruling*, we conclude that a ''substantial number'' of small entities will not be affected by the *Declaratory Ruling.* Therefore, we certify that the requirements of this *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

Report to Congress

The Commission will send a copy of the *Declaratory Ruling*, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Declaratory Ruling* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to the authority contained in sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152 and 225, this *Declaratory Ruling* is adopted. Ultratec's *Petition for Clarification* is granted to the extent indicated herein. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Declaratory Ruling* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24485 Filed 9–26–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 030716175–3175–01; I.D: 071503B]

RIN 0648–AQ77

Endangered and Threatened Species: Amendment of the Code of Federal Regulations to Withdraw Critical Habitat Designations Vacated by Court Order

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to remove critical habitat designations for 19 salmon and steelhead Evolutionarily Significant Units (ESUs) in order to comply with an order of a Federal District Court.

DATES: The action became effective on April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Stone, NMFS Northwest Region (WA, OR, and ID), 503/231–2317; Craig Wingert, NMFS Southwest Region (CA), 562/980–4021; or Lamont Jackson, NMFS Headquarters (Silver Spring, MD), 301/713–1401.

SUPPLEMENTARY INFORMATION: On February 16, 2000, NMFS published a final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead under section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*)(65 FR 7764). The designations included more than one hundred and fifty river subbasins covering a total land area of approximately 154,000 square miles (400,400 square kilometers) in WA, OR, ID, and CA. Within each occupied subbasin, NMFS designated as critical habitat those stream areas accessible to listed fish, along with the associated riparian zone. Areas considered inaccessible included areas above long-standing natural impassable barriers and areas above impassable dams, but not areas above ephemeral barriers such as failed culverts.

NMFS determined in 2000 that the critical habitat designations would impose few if any additional requirements on federal agencies beyond those already imposed by the listing of the species themselves. The ESA's prohibition against any action that is likely to result in the destruction or adverse modification of critical habitat applies only to federal agencies, which are also prohibited from taking any action that is likely to jeopardize the continued existence of listed species. NMFS reasoned that since it was designating only occupied habitat, there would be few or no actions that adversely modified critical habitat that also did not jeopardize the continued existence of the species. Therefore, NMFS determined there would be no economic impact as a result of the designations (65 FR 7764, 7765, February 16, 2000).

The National Association of Homebuilders (NAHB) challenged the critical habitat designations in U.S. District Court in Washington, D.C. as having inadequately considered the economic and other impacts of the designations (*National Association of Homebuilders* v. *Evans*, Civ. No. 00–2799). NAHB also challenged NMFS' designation of Essential Fish Habitat (EFH) (Pacific Coast Salmon Fishery Management Plan, 2000). While the NAHB litigation was pending, the U.S. Court of Appeals for the Tenth Circuit issued its opinion in *New Mexico Cattlegrowers' Association* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). In that case, the Court rejected the Fish and Wildlife Service's approach to economic analysis, which was similar to the approach taken by NMFS in the final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead. Subsequent to the Tenth Circuit decision, NMFS entered into and sought judicial approval of a consent decree resolving the NAHB litigation. That decree provided for the withdrawal of the critical habitat designations for the 19 salmon and steelhead ESUs, and dismissed NAHB's challenge to the EFH designations. The District Court approved the consent decree and vacated the critical habitat designations by Court order on April 30, 2002 (2002 WL 1205743, D.D.C. April 30, 2002).

As a result of the Court's decision, the agency is now amending the Code of Federal Regulations to withdraw critical habitat designations for the following 19 ESUs of salmon and steelhead: (1) Puget Sound chinook salmon; (2) Lower Columbia River chinook salmon; (3) Upper Willamette River chinook salmon; (4) Upper Columbia River spring-run chinook salmon; (5) California Central Valley spring-run chinook salmon; (6) California coastal chinook salmon; (7) Oregon Coast coho salmon; (8) Hood Canal summer-run chum salmon; (9) Columbia River chum salmon; (10) Ozette Lake sockeye salmon; (11) Southern California steelhead; (12) South-Central California coast steelhead; (13) Central California Coast steelhead; (14) Central Valley California steelhead; (15) Upper Columbia River steelhead; (16) Snake River Basin steelhead; (17) Lower Columbia River steelhead; (18) Upper Willamette River steelhead; and (19) Middle Columbia River steelhead.

Classification

This final rule implements a Court order and does not involve the exercise of agency discretion and, therefore, under 5 U.S.C. 553(b)(B) good cause exists to waive the notice and comment requirements of the Administrative Procedure Act, as such procedures are unnecessary. Further, in that this rule implements a Court order already in effect, good cause exists under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 226

Endangered and threatened species

Dated: Septrmber 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—[AMENDED]

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. Remove Tables 7 through 24.

■ 3. Remove and reserve § 226.212.

[FR Doc. 03–24567 Filed 9–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 092303B]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting fishing with trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 limit of non-chinook salmon caught by vessels using trawl gear in the Catcher Vessel Operation Area (CVOA).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 24, 2003, until 1200 hrs, A.l.t., October 14, 2003.

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

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

The 2003 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA is 42,000 animals (§ 679.21(e)(7)(vii)). Regulations at § 679.21(e)(1)(i) allocate 7.5 percent of this amount, 3,150 animals, to the groundfish Community Development Quota (CDQ) program as prohibited species quota reserve, leaving 38,850 animals in the non-CDQ reserve. The CVOA is defined as that part of the BSAI that is south of 56°00′ N. lat. and between 163°00′ W. long. and 167°30′ W. long. (Figure 2 to 50 CFR part 679).

In accordance with § 679.21(e)(7)(vii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA has been reached. Consequently, the Regional Administrator is prohibiting fishing with trawl gear in the Chum Salmon Savings Area defined at Figure 9 to 50 CFR part 679.

As of August 21, 2003, 0 mt of the non-chinook salmon CDQ reserve has been caught by vessels using trawl gear in the CVOA. Therefore, CDQ participants are not yet prohibited from fishing with trawl gear in the Chum Salmon Savings Area.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 limit of non-chinook salmon caught by vessels using trawl gear in the CVOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

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

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

Dated: September 23, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–24534 Filed 9–24–03; 2:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 188
Monday, September 29, 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

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 99–017P]

RIN 0583–AC83

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the definitions and standards for the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of the age and sex of the bird. Genetic improvements and new poultry management techniques have reduced the grow-out period for some poultry classes, while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. This action is being taken to ensure that poultry products are labeled in a truthful and non-misleading manner.

DATES: Comments must be received on or before November 28, 2003.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #99–017P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, SW., Washington, DC 20250–3700. All comments submitted on this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Post, Director, Labeling and Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

The Poultry Products Inspection Act (PPIA) prohibits the distribution of poultry products that are adulterated or misbranded (21 U.S.C 458). The PPIA also authorizes the Secretary of Agriculture to prescribe, among other things, definitions and standards of identity or composition for poultry products, whenever the Secretary determines that such action is necessary for the protection of the public (21 U.S.C. 457(b)). Poultry classes were established by USDA almost 30 years ago to aid in labeling five kinds of poultry—chickens, turkeys, ducks, geese, and guineas. The classes were based primarily on the age and sex of the bird, with Rock Cornish-type chickens also being defined by breed.

FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

Recently, FSIS reviewed the poultry class definitions with USDA's Agricultural Marketing Service (AMS) Poultry Programs, and both agencies discussed the issue with members of the poultry industry and others knowledgeable about poultry genetics and breeding. The mission of the AMS is to facilitate the marketing of poultry through grading, certification, market news, and commodity procurement services. The classes are incorporated into AMS's official U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 *et seq.*) as a convenience for those processors, marketers, and consumers using AMS's voluntary poultry grading service.

After examining current poultry production methods and reviewing the poultry classes defined in 9 CFR 381.170, FSIS and AMS determined that a number of poultry class definitions did not reflect today's poultry characteristics nor current industry practices. Advancements in breeding and husbandry have generally shortened the period of time required for birds to attain market-ready weights. For example, today broilers 3.5 to 4.5 pounds in weight can be produced in less than 10 weeks, and are frequently produced in 6 to 8 weeks. Thirty years ago, it took 12 to 13 weeks to produce birds with the physical characteristics of broilers. Given these findings, FSIS and AMS determined that the poultry class definitions need to be revised to more accurately and clearly describe poultry being marketed today and to ensure that the labels for poultry products are truthful and non-misleading. When the revised class definitions are finalized, AMS will incorporate them into its U.S. Classes, Standards, and Grades for Poultry.

FSIS is concerned with the truthful presentation of the characteristics of poultry products because consumers rely on product labels when making purchasing decisions. The age of the bird affects the tenderness of the meat and the smoothness of skin, thus dictating the cooking method to use for maximum flavor and tenderness. Poultry meat from young birds is more tender than that from older birds. Young birds are suitable for all cooking methods, especially broiling, barbecuing, roasting, and frying. Less tender, mature birds are most suitable for moist-heat cooking, such as stewing and baking, and may be preferred for use in soups, casseroles, salads, and sandwiches.

FSIS is proposing to lower the age definitions for six classes of poultry: Rock Cornish game hen or Cornish game hen from 5 to 6 weeks to less than 5 weeks (381.170(a)(1)(i)); broiler or fryer from under 13 weeks to less than 10 weeks (381.170(a)(1)(iii)); roaster or roasting chicken from 3 to 5 months to less than 12 weeks (381.170(a)(1)(iv)); capon from under 8 months to less than 4 months (381.170(a)(1)(v)); fryer-roaster turkey from under 16 weeks to less than 12 weeks (381.170(a)(2)(i)); and young turkey from under 8 months to less than 6 months (381.170(a)(2)(ii)). The Agency is proposing to delete the word ''usually'' from the age designation descriptions in all of the poultry class standards so that these age designations will be clear and enforceable.

The poultry class definitions for geese and guineas currently do not contain age designations that distinguish young birds from mature birds(381.170(a)(4) and 381.170(a)(5)). However, the Agency is considering revising the geese and guinea poultry class standards to include such age designations. Therefore, FSIS is soliciting comments on what age designations would be appropriate for poultry identified as ''young geese,'' ''mature geese,'' ''young guineas'' and ''old guineas.''

The general physical characteristics of birds identified as mature or old turkeys

are the same regardless of the gender of the bird. Therefore, FSIS is proposing to revise the labeling of mature or old turkeys so that sex designation, such as hen or tom, currently required, would be optional.

Current class definitions state that a bird labeled as a Rock Cornish-type chicken must be ''the progeny of a cross between a purebred Cornish and a purebred Rock chicken'' (9 CFR 381.170(a)(1)(ii)), or ''a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken'' (9 CFR 381.170(a)(1)(i)). While this statement was appropriate when these chickens were originally developed over 40 years ago, today it is doubtful that any purebred Cornish or Rock lines exist in commercial chicken production. The names ''Rock Cornish game hen'' and ''Cornish game hen'' are now used to identify a very young, very small, whole chicken that is marketed as an individual serving. Although the names refer to hens, either sex can be used since birds of this class are sexually immature. The names ''Rock Cornish fryer,'' ''Rock Cornish roaster,'' and ''Rock Cornish hen'' are no longer meaningful because these birds cannot be reliably distinguished on the basis of progeny from other existing classes. Therefore, the Agency is proposing to define the Rock Cornish game hen or Cornish game hen class only in terms of age and weight and to delete the class of Rock Cornish fryer, roaster, and hen.

The existing class definition for the roaster or roasting chicken class states that the breast bone cartilage of these birds ''may be somewhat less flexible'' than the breast bone cartilage of birds in the broiler or fryer class (9 CFR 381.170(a)(iv)). The Agency is proposing to replace the words ''may be'' with the word ''is,'' so that the definition better reflects the characteristics of birds classified as roasters and to make the language of the revised roaster class definition more consistent with the other poultry class definitions.

In most of the poultry class definitions the term ''mature'' refers to old adult birds. However, the term ''fully matured'' in the yearling turkey class definition is used to describe the breeding capability of the bird. FSIS has determined that the description of the age and physical characteristics provided in the proposed yearling turkey definition sufficiently characterize the birds that belong to this poultry class. Therefore, for consistency, FSIS is proposing to delete the term ''fully matured'' from the yearling turkey class definition.

FSIS is proposing to change the name of the broiler duckling or fryer duckling class to ''duckling.'' Birds in this class of ducks are currently labeled and marketed as ''ducklings'' without the prefixes ''broiler'' or ''fryer.'' These are obsolete marketing terms for ducks that are not being used and have not been used for quite some time. In addition, FSIS is proposing to change the name of the roaster duckling class to ''roaster duck.'' Roaster ducks are currently labeled and marketed as ''ducks'' rather that ''ducklings.''

In addition to the substantive changes made to the poultry class standards, the class definitions have been edited for clarity, consistency, and uniformity. For example, under the proposed revisions, the class names used within the regulatory text will be placed in quotation marks to make the format of the poultry class standards regulation consistent with the other regulations that prescribe standards of identity for poultry products. References to specific numbers of weeks or months will be preceded by the words ''less than'' or ''more than'' rather than ''under'' or ''in excess of'' to improve the clarity of the regulations.

To avoid inconsistencies, section 457(b)(2) of Title 21 of the U.S.C. requires that the Secretary of Agriculture consult with the Secretary of Health and Human Services and an appropriate advisory committee as provided for in 21 U.S.C. 454 before issuing standards of identity for poultry products. Pursuant to this requirement, before it publishes any final rule that is developed as a result of this proposal, FSIS will consult with the Food and Drug Administration (FDA) to ensure that the revised poultry class standards are not inconsistent with any existing product standards established by the FDA. FSIS will also present the revised poultry class standards to the National Advisory Committee on Meat and Poultry Inspection (NACMPI) for consultation to ensure that there is no inconsistency between Federal and State standards. Any changes to the revised standards that occur as a result of these consultations will be incorporated into the final rule.

Interested parties have suggested that certain poultry classes should include a requirement for ready-to-cook (RTC) carcass weight in addition to the proposed maturity factors. For example, some parties have suggested that the Agency require that roaster chickens have a RTC weight of 5 pounds or more in addition to the appropriate maturity characteristics. FSIS is soliciting comments regarding the merit of establishing RTC carcass weights or maximums for poultry classes. To be of value, the comments must provide a factual basis for or against the establishment of weight requirements.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

FSIS is proposing to amend its regulations to update the standards for poultry classes to reflect current poultry characteristics and industry production practices. Under the authority of the PPIA, FSIS develops and enforces poultry product definitions and standards of identity to protect the public. FSIS is concerned with the truthful presentation of the characteristics of poultry because consumers rely on product labels when making purchasing decisions. For FSIS to enforce poultry class labeling claims, the poultry class definitions must reflect current poultry characteristics and the corresponding industry norms.

Presently, labels on poultry products are not necessarily based on current industry standards. For example, birds with the general physical characteristics of the broiler class can be produced in less than 10 weeks, often in 6 to 8 weeks, and are labeled as ''broilers.'' However, the current broiler class definition under 9 CFR 381.170 states that broilers are ''usually under 13 weeks of age.'' Birds with the general physical characteristics of the roaster class are being produced in 10 to 12 weeks and are labeled as ''roasters.'' However, the current roaster class definition under 9 CFR 381.170 states that roasters are ''usually 3 to 5 months of age.'' While these birds have physical characteristics that are consistent with the current poultry class standards that are defined in 9 CFR 381.170, the age references in the regulations may be misleading to consumers because the ages associated with the regulatory classification do not reflect current industry norms. When consumers purchase a bird labeled as a ''broiler,'' they are generally getting a bird that is less than 10 weeks old, not as old as 13 weeks as suggested by the current broiler class definition. Likewise, when consumers purchase a bird labeled as a ''roaster,'' they are generally getting a bird that was produced in less than 12 weeks rather than 3 to 5 months as suggested by the current roaster class definition. Labeling a product as a ''broiler,'' ''roaster,'' or any other definition should be truthful and reflective of today's production practices and industry norms so that product definitions and labels are

correct and not misleading to consumers. All poultry being marketed today have physical attributes that conform to the proposed class definitions. Thus, there is no need to establish entirely new poultry classes.

In addition to the proposed rule, FSIS considered the option of no rulemaking and the option of defining poultry classes using weight ranges in place of general maturity characteristics. Under the option of no rulemaking, the poultry class standards as defined in the FSIS regulations would remain in place. However, these definitions fail to take into account current poultry characteristics and poultry production practices, which have generally shortened the period of time required for birds to attain market-ready weights. Therefore, the usual ages of the birds stated in the current class definitions are inaccurate and, as a result, may mislead consumers. Without the proposed changes, FSIS's ability to enforce poultry class labeling claims is also not as effective.

At the suggestion of a trade organization and of an industry processor, FSIS considered using weight ranges to define turkey and roaster classes rather than age and general maturity characteristics. However, for turkey classes, FSIS did not believe that such a class system would accurately distinguish birds that differ significantly in product characteristics, such as meat tenderness and skin texture. Also, while some processors use the weight of the poultry they sell as part of their marketing program, except for Rock Cornish game hens, none of the poultry classes are based on weight. During early discussions with industry, a major processor that sells roasters suggested creating a weight requirement for this class of birds. However, information suggested that classifying roasters on the basis of weight was not an accepted practice by processors industry-wide. Therefore, the Agency has used age and general physical characteristics as the basis for the revised poultry class standards. Nevertheless, in this proposed rule, FSIS is soliciting comments on the merit of establishing ready-to-cook weight ranges for poultry classes.

Amending the poultry class definitions to better reflect the characteristics of poultry that is being marketed today will benefit consumers by ensuring that labels for poultry products are truthful and non-misleading. Companies, such as high volume food buyers, will also benefit because they refer to these classes in their purchase specifications to ensure that they receive products with the appropriate characteristics. Because poultry class standards are used by AMS to define requirements for quality grades and in official U.S. government procurement specifications used to purchase products for the School Lunch Program and the military, updating the poultry class standards will benefit AMS by ensuring the legal sufficiency of these quality requirements and the procurement documents. This proposed rule will also enhance FSIS' ability to enforce poultry class labeling claims.

This proposed rule has the potential to raise prices somewhat for consumers. The most significant change in the proposed poultry classes is the definition changes for the broiler and roaster classes, and the effects of this change may be minimal. Roasters are generally $.08 to $.13 per pound more expensive than broilers. Because the typical age in the definition of roaster will be reduced from 3 to 5 months to less than 12 weeks, some birds that may have been sold as broilers under the less than 13 week age definition may be sold for higher price per pound as roasters. This change would result in a net transfer from consumers to producers. Assuming a 5 lb. dressed carcass, that is a price difference of $.40 to $.65 per bird. If such a change occurs, there would be no net social cost, but there would be redistributive impacts. FSIS has no information on and cannot estimate the potential for such changes. Because these birds have the general physical characteristics of roasters, they most likely are already being marketed as roasters rather than broilers. Thus, the proposed changes to the poultry class definitions may validate existing practices so that this cost effect should be minimized.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The advancements in growing practices and technologies that have occurred since the original poultry class standards were developed are prevalent throughout the industry, regardless of the size of the entity. The proposed rule merely updates existing regulations to reflect current poultry characteristics and production practices used throughout the entire industry.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule (1) preempts all State and local law and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The Constituent update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.170 would be amended by revising paragraph (a) to read as follows:

§ 381.170 Standards for kinds and classes, and for cuts of raw poultry.

(a) The following standards specify the various classes of the specified kinds of poultry, and the requirements for each class:

(1) *Chickens*—(i) *Rock Cornish game hen or Cornish game hen.* A ''Rock Cornish game hen'' or ''Cornish game hen'' is a young immature chicken (less than 5 weeks of age), of either sex, with a ready-to-cook carcass weight of not more than 2 pounds.

(ii) *Broiler or fryer.* A ''broiler'' or ''fryer'' is a young chicken (less than 10 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(iii) *Roaster or roasting chicken.* A ''roaster'' or ''roasting chicken'' is a young chicken (less than 12 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

(iv) *Capon.* A ''capon'' is a surgically neutered male chicken (less than 4 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(v) *Hen, fowl, baking chicken, or stewing chicken.* A ''hen,'' ''fowl,'' ''baking chicken,'' or ''stewing chicken'' is an adult female chicken (more than 10 months of age) with meat less tender than that of a roaster or roasting chicken and a nonflexible breastbone tip.

(vi) *Cock or rooster.* A ''cock'' or ''rooster'' is an adult male chicken with coarse skin, toughened and darkened meat, and a nonflexible breastbone tip.

(2) *Turkeys*—(i) *Fryer-roaster turkey.* A ''fryer-roaster turkey'' is an immature turkey (less than 12 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(ii) *Young turkey.* A ''young turkey'' is a turkey (less than 6 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is less flexible than that of a fryer-roaster turkey.

(iii) *Yearling turkey.* A ''yearling turkey'' is a turkey (less than 15 months of age), of either sex, that is reasonably tender-meated with reasonably smooth-textured skin.

(iv) *Mature or old (hen or tom) turkey.* A ''mature turkey'' or ''old turkey'' is an adult turkey (more than 15 months of age), of either sex, with coarse skin and toughened flesh. Sex designation is optional.

(3) *Ducks*—(i) *Duckling.* A ''duckling'' is a young duck (less than 8 weeks of age), of either sex, that is tender-meated and has a soft bill and soft windpipe.

(ii) *Roaster duck.* A ''roaster duck'' is a young duck (less than 16 weeks of age), of either sex, that is tender-meated and has a bill that is not completely hardened and a windpipe that is easily dented.

(iii) *Mature duck or old duck.* A ''mature duck'' or an ''old duck'' is an adult duck (more than 6 months of age), of either sex, with toughened flesh, a hardened bill, and a hardened windpipe.

(4) *Geese*—(i) *Young goose.* A ''young goose'' is an immature goose, of either sex, that is tender-meated and has a windpipe that is easily dented.

(ii) *Mature goose or old goose.* A ''mature goose'' or ''old goose'' is an adult goose, of either sex, that has toughened flesh and a hardened windpipe.

(5) *Guineas*—(i) *Young guinea.* A ''young guinea'' is an immature guinea, of either sex, that is tender-meated and has a flexible breastbone cartilage.

(ii) *Mature guinea or old guinea.* A ''mature guinea'' or ''old guinea'' is an adult guinea, of either sex, that has toughened flesh and a non-flexible breastbone.

* * * * *

Done at Washington, DC, on September 24, 2003.

Linda Swacina,

Acting Administrator.

[FR Doc. 03–24536 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[Docket No. PRM 52–2]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is denying a petition for rulemaking (PRM) submitted by the Nuclear Energy Institute (NEI or the petitioner) and docketed as PRM 52–2. The petitioner requested that the NRC amend its regulations to remove requirements that applicants and licensees analyze, and the NRC evaluate, alternative energy sources and the need for power with respect to the siting, construction, and operation of nuclear power plants. The NRC is denying the petition because the NRC must continue to consider alternative energy sources and the need for power to fulfill its responsibilities under the National Environmental Policy Act of 1969, as amended (NEPA).

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner may be viewed electronically on public computers located at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. These documents are also available on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

FOR FURTHER INFORMATION CONTACT: Nanette V. Gilles, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1180, e-mail *nvg@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

By letter dated July 18, 2001, NEI submitted a petition for rulemaking (ADAMS accession no. ML012060198) to modify Title 10, Part 52, of the *Code of Federal Regulations* (10 CFR Part 52), Subpart A, ''Early Site Permits.'' The petitioner requested that the NRC amend its regulations in 10 CFR part 52 to eliminate the requirement that an early site permit (ESP) applicant include, and the NRC review, alternatives to the site proposed in an ESP application. The petitioner further requested that the NRC initiate a rulemaking to remove requirements in 10 CFR parts 2, 50, and 51 that applicants and licensees analyze, and the NRC evaluate, alternative sites, alternative energy sources, and the need for power with respect to the siting, construction, and operation of nuclear power plants. The NRC docketed the petition as PRM 52–2.

The regulations in 10 CFR part 52 govern the issuance of ESPs, standard design certifications, and combined licenses (COLs) for new nuclear power facilities licensed under section 103 or 104b of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. The provisions of 10 CFR part 52, subpart A, apply to applicants seeking an ESP. The regulations in 10 CFR part 52, subpart A, are designed to resolve site suitability

issues in a licensing proceeding as early as possible, before an applicant commits significant resources. The ESP process in subpart A allows an applicant to ''bank'' sites and is expected to improve the effectiveness of the nuclear power plant licensing process.

The regulations in 10 CFR parts 2, 50, and 51 referenced by the petitioner relate to requirements for filing and acceptance of licensing applications, review of site suitability issues, environmental reports, and environmental impact statements (EISs).

A notice of receipt of the petition was published in the **Federal Register** on September 24, 2001 (66 FR 48828). The comment period closed on November 8, 2001. The NRC received letters from 12 commenters, 9 of which favored the petition and 3 opposed it. Of the nine letters in favor, seven were from nuclear power plant owners and/or operators, one was from a nuclear steam supply system vendor, and one was from the petitioner. Of the three letters in opposition, two were from representatives of public advocacy groups and the other was from a private citizen. This notice presents a discussion of the comments received.

In its petition, NEI requested that the NRC grant the petition as part of an ongoing NRC rulemaking to update 10 CFR part 52. This rulemaking activity addresses lessons learned during previous design certification reviews and discussions with stakeholders about the ESP, design certification, and COL review processes. As discussed below, the NRC decided to deny this petition. Therefore, further consideration of the petition during the 10 CFR part 52 rulemaking is not necessary.

On December 18, 2002, NEI sent the NRC a letter (ADAMS Accession No. ML023570346) on the subject ''Petition for Rulemaking PRM 52–2, Supplemental Comments.'' In the letter, NEI stated that a number of developments had caused it to recommend a different approach for addressing alternative sites than that presented in its petition of July 18, 2001, where it had urged the NRC to eliminate consideration of alternative sites from the NRC nuclear power plant siting and licensing processes. NEI further indicated that, based upon a legal analysis attached to the letter, ''the modifications to 10 CFR part 52, subpart A, that were proposed in [its petition] should not be adopted.'' *Supplemental Comments,* p. 2. The letter stated that alternative sites should continue to be evaluated, but the NRC should limit its analysis of alternatives to those that are pertinent in the context of the license application before it, *i.e.*, to sites that the applicant has identified as practicable alternatives. In the view of the petitioner, NRC review of the applicant's chosen alternative sites would be sufficient to satisfy NEPA's ''hard look'' requirement.[1] In addition, NEI asserted that where a license applicant has ownership or control of only one site and, because of the nature of its business, has conducted no alternative site analysis, the NRC should only determine ''whether the proposed facility could be located on that site in compliance with all pertinent laws and NRC regulations.'' *Id.* NEI's legal analysis set forth several additional propositions. First, where an ESP or COL applicant's purpose is to build new units at existing nuclear sites, NEPA does not require consideration of locating those units at alternative sites that the applicant does not control. *See ESP–18a: Alternative Site Reviews for Early Site Permit Applicants Using Existing Licensed Sites,* dated November 19, 2002, attached to NEI's letter of December 18, 2002, pp. 7–8. Second, NEI asserted that non-nuclear sites are unlikely to be obviously superior to an existing nuclear site that has already gone through the NEPA process. NEI believes that the most that NEPA would require is a comparison of a generic ''greenfield'' site and a generic industrial site to ''confirm the absence of any anomalous characteristics that might alter the presumption that no obviously superior site exists.'' *Id.,* pp. 8–9.

The Commission has decided to treat NEI's letter of December 18, 2002, as a partial withdrawal of its petition with respect to the matter of alternative sites. Accordingly, this denial does not address either the petitioner's proposal on alternative sites as described in its petition of July 18, 2001, or the petitioner's specific propositions on alternative sites as set forth in the submission of December 18, 2002. However, the remainder of this notice more fully discusses some of the legal decisions cited in NEI's submission of December 18, 2002.[2]

The Petition

The petitioner requested that the Commission initiate a rulemaking to amend 10 CFR part 51 to remove requirements that applicants and licensees analyze, and the NRC evaluate, alternative energy sources and the need for power with respect to the siting, construction, and operation of nuclear power plants. The petitioner stated that the need for these changes is a direct outgrowth of the dramatic changes that have occurred in the electric power industry, most notably the passage of the Energy Policy Act of 1992 and the resultant actions by the Federal Energy Regulatory Commission (FERC) to impose open access transmission requirements on electricity transmission providers. The petitioner stated that these changes have fundamentally altered both the marketplace for electricity and the makeup of electricity generating companies, and that the regulatory framework that the NRC uses to implement its responsibilities under NEPA should be revised accordingly.

NEPA Requirements

The petitioner argued that NEPA requires consideration of ''alternatives'' to a proposed action but does not specifically require an analysis of alternative energy sources or the need for power. However, the NRC's implementing regulations in 10 CFR part 51 require that those matters be addressed. General guidance on the environmental reviews that are to be conducted is specified in Regulatory Guide 4.2, ''Preparation of Environmental Reports for Nuclear Power Plants'' (July 1976) and NUREG–1555, ''Environmental Standard Review Plan'' (March 2000), which call for a review of alternative energy sources and the need for power. The petitioner believes that the NRC's regulations and implementing guidance reflect the structure of the 1970s electric utility industry. However, because the electric power industry has experienced dramatic changes since that time, the petitioner believes that the NRC needs to reconsider its implementation of its responsibilities under NEPA. The petitioner also believes that the NRC has the statutory authority to revise its regulations to eliminate NRC review of

[1] NEPA requires any Federal agency considering a major action likely to significantly affect the quality of the human environment to take a ''hard look'' at the environmental impacts of the proposed action and all reasonable alternatives to it.

[2] Independent of NEI's petition for rulemaking, the NRC is considering a rulemaking to address the range of issues associated with the NRC's consideration of alternative sites in early site permit (ESP), construction permit (CP), and combined license (COL) proceedings. *See* 67 FR 79165 (December 27, 2002). On January 28, 2003, the NRC held a public meeting to discuss these issues and to solicit stakeholder views on potential options that the NRC could pursue. *See Transcript of Meeting: Criteria for Review of Alternative Sites* (''Meeting Transcript,'' ADAMS Accession No. ML030570019). At this meeting, NEI presented its views which were consistent with the positions expressed in its December 18, 2002 submission. *See Meeting Transcript,* pp. 60–63, 72–74, 78–80. Accordingly, the Commission will consider NEI's alternative siting proposal as described in its December 18, 2002 submission in considering whether to proceed with rulemaking addressing alternative sites.

alternative energy sources and the need for power. In addition, the petitioner believes that the NRC can, and should, conclude that its implementation of NEPA no longer requires these reviews because of the fundamental changes that have occurred in the electric utility industry. Moreover, the petitioner believes that doing so is important to ensure the efficiency and the safety focus of NRC reviews of new licensing applications.

Role of State and Local Governments

The petitioner appeared to argue that the NRC's licensing process does not change the division of authority between the Federal Government and the States over the construction and operation of electric power generating facilities. According to the petitioner, an NRC license or permit constitutes approval of a site or plant only under the Federal statutes and regulations administered by the NRC, and not under other applicable laws. For example, individual State laws may require a State determination of the need for power and an evaluation of alternative energy sources, or may require the issuance of a certificate of public convenience and necessity, and various environmental permits.

The petitioner argued that the NRC's evaluation of the environmental impacts of the proposed plant neither supplants nor interferes with the traditional responsibilities of States in evaluating the need for power and the suitability of alternative energy sources with respect to the potential use of that site. The NRC explicitly recognized the extent of its authority in the evaluations of alternatives in 10 CFR 51.71(e), *Preliminary recommendation*, Footnote 4.[3]

Nonetheless, the petitioner noted that in the context of the license renewal rule (61 FR 28467; June 5, 1996) many States expressed concern that the NRC's findings, although not legally dispositive, would establish an official Federal position that the States believed would be difficult to rebut in State proceedings. Specifically, the States expressed concern regarding the NRC's consideration of the need for power and alternative energy sources in the generic environmental impact statement for license renewal (NUREG–1437, Chapters 8 and 9) and the associated proposed amendments to 10 CFR part 51 (56 FR 47016; September 17, 1991). The States were concerned that an NRC finding on those matters would infringe on State jurisdiction over economic regulation of utilities, including the generation, sale, and transmission of electric power produced by nuclear power plants. To address the States' concerns and the questions raised by the U.S. Environmental Protection Agency and the Council on Environmental Quality (CEQ), the NRC issued a supplement to its proposed License Renewal Rule (59 FR 37724; July 25, 1994) to address whether, under NEPA, the agency could and should eliminate consideration of issues over which States have primary jurisdiction.

The petitioner argued that, in that supplement, the NRC thoroughly and thoughtfully evaluated its responsibility under NEPA in the context of the States' expressed concerns. First, the NRC clearly recognized the primacy of State regulatory decisions regarding future energy options. Second, the agency recognized that the electricity-generating company will also make the choice of energy options. Third, the NRC characterized its process as one that preserves the option of continuing to operate nuclear plants.

The petitioner stated that, in the license renewal context, the NRC revised the definition of the purpose of the Federal action to reflect the applicant's goals in seeking NRC approval of the licensing action. According to the petitioner, the NRC's definition of the purpose of the Federal action in the license renewal context was ''to preserve the option of continued operation of the nuclear power plant for State regulators and utility officials in their future energy planning decisions'' (59 FR 37725; July 25, 1994).

The petitioner stated that the NRC revised the definition of the proposed Federal action to more accurately reflect what is really to be accomplished: establishing a stable and predictable regulatory approach to determine whether the option of nuclear power as a source of generating capacity at that site could be considered in future State energy planning decisions. The petitioner argued that the proposed definition allows only two basic alternatives: renewing the license to preserve the nuclear option or not renewing the license (59 FR 37725; July 25, 1994).

The petitioner believes that the license renewal example demonstrates that the NRC has the authority to determine which matters are pertinent to the agency's NEPA evaluation of an application to build new nuclear power plants. The petitioner did not mention that the NRC does, in fact, continue to consider alternative energy sources in its license renewal reviews. In addition, the petitioner did not mention that license renewal is a post-construction licensing activity.

Application of NEPA to the Construction and Operation of Nuclear Power Plants

According to the petitioner, NEPA requires consideration of ''alternatives,'' but does not require the NRC to evaluate the need for power or alternative energy sources. The petitioner argued that, although NEPA has never required these analyses, the electric utility structure in the 1970s was such that a typical environmental review for constructing and operating a nuclear power plant included an evaluation of the need for power and alternative energy sources. As a result, many licensing decisions and judicial determinations have been based on the NRC's interpretation of its responsibilities under NEPA and the corresponding NRC regulations and practices that the agency adopted accordingly. However, the petitioner believes that what may have been pertinent 30 years ago is no longer pertinent. The petitioner did not acknowledge that the ''utility'' regulatory structure that has been in place over the past 30 years remains in effect in a number of States and will remain in effect for the foreseeable future.

The petitioner pointed out that, in the 1970s, the typical applicant for a nuclear power plant was an electric utility that was regulated by a State public utility commission. Additionally, as a regulated electric utility, the applicant had the legal authority to exercise the power of eminent domain to build generating facilities and any necessary supporting infrastructure. The petitioner believes that any new nuclear power plant today is likely to be constructed and operated by an unregulated merchant generator, which will operate in a competitive marketplace. The petitioner argued that a merchant generator will not build and operate a plant unless it believes there is a need for power or that the facility will generate electricity at a lower cost than the competing facilities. Additionally, the petitioner believes that a merchant generator will not build and operate a nuclear power plant if a superior alternative source of energy is available. In States where utilities are still subject to regulation, the petitioner argued that the situation described

[3] ''The consideration of reasonable alternatives to a proposed action involving nuclear power reactors (*e.g.*, alternative energy sources) is intended to assist the NRC in meeting its NEPA obligations and does not preclude any State authority from making separate determinations with respect to these alternatives and in no way preempts, displaces, or affects the authority of States or other Federal agencies to address these issues.''

relative to license renewal is directly applicable. For these reasons, the petitioner concluded that it is not reasonable to believe that a nuclear power plant will be built in today's environment absent a need for power or some other benefit.

Furthermore, the petitioner stated that it is not reasonable to assume that the NRC will be able to identify an alternative energy source that is both feasible and preferable to the choices made by a merchant generator. Because the consideration of alternatives under NEPA is subject to a rule of reason, the petitioner believes that NEPA does not compel the NRC to consider these factors in today's environment. Even if other sources are available—perhaps even preferable in some respects to the applicant's proposal—the petitioner stated that the NRC lacks the authority to compel the applicant to use the alternative source. Therefore, the petitioner concluded that, because NRC consideration of alternative energy sources and the need for power is not required under NEPA, denial of a permit or license for reasons related to these matters is inappropriate.

The petitioner argued that, in the context of an ESP, the proposed major Federal action is to grant a permit for a site for one or more nuclear power plants. To actually build and operate one or more nuclear plants, an applicant must also obtain a COL. In a COL proceeding, the proposed major Federal action is the approval to build and subsequently operate a particular nuclear plant at a specified site. If the COL references an ESP, the site approval is already established, and the site suitability issue is restricted to whether the proposed nuclear power plant(s) fit(s) within the ESP's siting envelope. If the COL applicant does not reference an ESP, the major Federal action with respect to approving the specified site is the same as for an ESP. The petitioner argued that in each case (ESP or COL, with or without a referenced ESP), the proposed action does not decide if there is a need for power or which of the various possible sources of electric power best meets the needs of the given State or region, provides the most economic electricity to ratepayers, or is environmentally the most benign.

The petitioner stated that its proposal to eliminate the requirement for NRC consideration of alternative energy sources and the need for power is based on the fundamental NEPA principle that an agency need only consider alternatives that will accomplish the applicant's goal. The petitioner argued that, in the context of 10 CFR part 52, the ESP applicant's goal is to determine whether the proposed site satisfies statutory and NRC regulatory requirements as a suitable location for a nuclear power plant. Similarly, the petitioner stated that the goal of a COL applicant is to determine whether the proposed plant satisfies applicable safety and environmental requirements, including the criteria established in any referenced ESP.

The petitioner further stated that each Federal agency must determine which alternatives are reasonable and should be considered under NEPA. Morever, the NRC must consider the no-action alternative and actions that could mitigate the environmental impact of the proposed action. According to the petitioner, in addition to the no-action alternative, the NRC must consider only those alternatives that serve the purpose for which an applicant is seeking approval—and there are no alternatives. The petitioner believes that defining the proposed action in this manner reflects reality. Specifically, the NRC is not considering a proposal that would determine how or where electricity should be generated in the future. Rather, in either the ESP or COL proceeding, the NRC is considering only whether a specific application meets NRC regulations, not whether one or more nuclear facilities should, or will, be built.

The petitioner argued that, given the specific goals of ESP and COL applicants, the NRC should consider, in addition to the no-action alternative, only actions that serve the applicant's specific goal to determine whether the application meets all applicable requirements. Thus, the petitioner argued, it is unnecessary and inappropriate for the NRC to require applicants to analyze alternatives that would not fulfill the goal of determining whether the proposed site and facilities meet NRC requirements. Similarly, the petitioner argued, it is unnecessary and inappropriate for the NRC to use its limited resources to evaluate possible alternative energy sources or the need for power. Thus, the petitioner concluded that the NRC, in its NEPA analysis, is not legally obligated and should not attempt to reach any conclusions regarding alternative energy sources or the need for power.

Public Comments on the Petition

The NRC received 12 letters commenting on this petition. Nine commenters favored the petition. Seven of those letters were from nuclear power plant owners and/or operators, one was from a nuclear steam supply system vendor, and one was from the petitioner. Of the three letters opposed to the petition, two were from representatives of public advocacy groups and the other was from a private citizen.

Comments: The commenters in favor of the petition summarized the arguments in the petition and stated their support for the petitioner's position. The commenters also expressed interest in including the petition in the ongoing 10 CFR part 52 rulemaking activity.

Response: The comments received in favor of the petition provided no additional bases for the petition. Therefore, these comments are addressed by the NRC's reasons for denying the petition, as discussed below.

Comment: A private citizen stated that, instead of further degrading the defense of the United States of America by the actions proposed in the petition, the NRC should additionally require applicants to evaluate the impact of ''deep undergrounding'' of nuclear power plants.

Response: The NRC believes that the addition of requirements for applicants to evaluate the impact of ''deep undergrounding'' of nuclear power plants is outside of the scope of the petition. ''Deep undergrounding'' is a design matter rather than a siting matter.

Comments: A commenter representing Public Citizen, a public advocacy group, stated that NEI is asking the NRC to consider less information and fewer factors before approving a site for a nuclear power plant at a time when the public is seeking assurances that potential threats to public safety are being analyzed with more thoroughness, not less. The commenter further stated that the effect of the dramatic structural and economic transformation in the electric power industry is evidence that the review of alternative sites and energy sources should be of heightened, rather than diminished, concern to regulators and the public. The commenter argued that there is little in the story of electric utility restructuring thus far to suggest that nuclear power would ever be subjected to the same competitive market forces that apply in varying degrees to other sectors of the economy. The commenter stated that failure of nuclear power thus far to seriously compete in the new ''competitive'' electricity generation environment makes it more, rather than less, crucial to consider all options and alternatives before the NRC approves an ESP. The commenter also stated that the earlier in the process those alternatives are introduced, the better, lest a potential licensee expend considerable

resources on a failed siting application and subsequently attempt to retrieve its investment from ratepayers.

The commenter also argued that granting the petition would preclude consideration of alternative sites, alternative energy sources, and the need for power at any other point in the Federal regulatory process. The commenter stated that the NRC should use any discretion it has under NEPA to provide the most rigorous review possible in service of the greater public interest. Finally, the commenter stated that the NRC can best uphold the public's trust by denying NEI's petition.

Another commenter representing Greenpeace, a public advocacy group, expressed the general view that the NRC should deny the petition because ''to do otherwise will only serve to undermine public confidence in the legitimacy of the NRC and any future reactor licensing process,'' but did not address any of the specific matters raised in the petition.

Response: Although the NRC does not entirely agree with all of these commenters' arguments for denying the petition, the NRC agrees with their basic premise that the agency should deny the petition and continue to review the need for power and alternative energy sources in order to fulfill its obligations under NEPA. As discussed previously, the petitioner has withdrawn the proposal in its petition with respect to alternative sites; therefore, this Notice does not address the alternative site proposal from that petition.

Reasons for Denial

The petitioner has not demonstrated that applicable law or practice in other Federal agencies has changed in a manner that would lead the Commission to conclude that the NRC should no longer consider the need for power and alternative energy sources as a part of its nuclear power plant licensing proceedings in order to fulfill the agency's obligations under NEPA.

Need for Power

Section 102(2)(C) of NEPA requires that any recommendation for a major Federal action significantly affecting the quality of the human environment include a detailed statement addressing, among other things:

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action. * * *

42 U.S.C. 4332(2)(C).

As part of the NRC's NEPA analysis associated with nuclear power plant licensing,[4] the agency must include a balancing of costs and benefits. *United States Energy Research and Development Administration* (Clinch River Breeder Reactor Plant), CLI–76–13, 4 NRC 67, 76 (1976) *citing Calvert Cliffs Coordinating Committee, Inc.* v. *AEC,* 449 F.2d 1109 (D.C. Cir. 1971). Although NEPA does not explicitly mention cost-benefit balancing, judicial interpretations of the statute have established that Federal agencies must balance environmental costs against the anticipated benefits of the action in the EIS. *Louisiana Energy Services, L.P. (LES)* (Claiborne Enrichment Center), CLI–98–3, 47 NRC 77, 88 (1998) *citing Idaho By and Through Idaho Public Utilities Commission* v. *ICC,* 35 F.3d 585, 595 (D.C. Cir. 1994); *Calvert Cliffs,* 449 F.2d 1109.

The petitioner asserted that its proposal to eliminate NRC consideration of the need for power is based on the fundamental NEPA principle that an agency need only consider alternatives that will accomplish the applicant's goal (*i.e.*, the purpose of the proposed project). The Commission agrees with the petitioner's general premise that the NRC may ''accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.'' *Hydro Resources, Inc.,* CLI–01–4, 53 NRC 31, 55 (2001), *citing Citizens Against Burlington* v. *Busey,* 938 F.2d 190, 197 (D.C. Cir.), *cert. denied,* 502 U.S. 994 (1991). However, ''an agency will not be permitted to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered.'' *City of New York* v. *Department of Transportation,* 715 F.2d 732, 743 (1983); *see also, Citizens Against Burlington,* 938 F.2d at 196. In addition, the Commission recognizes that a proposed project may have more than one purpose. The Commission will ordinarily give substantial weight to a properly-supported statement of purpose and need by an applicant and/or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC.

The cost-benefit discussion also plays an important role in determining the appropriate scope of the NEPA analysis. In the past, the NRC equated the need for power with the benefits of the proposed action. '' 'Need for power' is a shorthand expression for the 'benefit' side of the cost-benefit balance, which NEPA mandates for a proceeding considering the licensing of a nuclear plant.'' *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB–573, 10 NRC 775, 804 (1979) (*quoting Rochester Gas and Electric Corp.* (Sterling Power Project, Nuclear Unit No. 1), ALAB–502, 8 NRC 383, 388 n. 11 (1978) *quoting Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB–422, 6 NRC 33, 90 (1977); *see also Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB–462, 7 NRC 320, 327 (1978).

Recently, the Commission has recognized that there may be multiple benefits to a proposed project. In *LES,* the Commission held that the Licensing Board should consider multiple benefits of the proposed uranium enrichment facility—including enhanced competition from another market participant, furtherance of national policy goals, and the creation of an alternative, more energy-efficient technology—when performing the ultimate cost-benefit balancing under NEPA. *LES,* 47 NRC at 89–96. Similarly, the Commission acknowledges that the construction and operation of a nuclear power plant could have multiple benefits such as reducing greenhouse gases and other air pollutants and increasing energy efficiency by retiring older, less efficient sources of power. *See also Niagara Mohawk,* 1 NRC at 353 (noting that ''a Licensing Board may also take cognizance of the effect which a shortage of fossil fuel, or a need to divert that fuel to other uses, might have upon demand for non-fossil fueled generating sources''). Therefore, in preparing an EIS for any future nuclear power plant licensing proceeding, the Commission will consider all reasonably foreseeable benefits of the proposed plant.

Consistent with the petitioner's claim, in considering the need for power as part of the NEPA process, the NRC does not supplant the States, which have traditionally been responsible for assessing the need for power generating facilities, their economic feasibility and for regulating rates and services. As the petitioner noted, the NRC has acknowledged the primacy of State regulatory decisions regarding future energy options. However, this acknowledgment does not relieve the NRC from the need to perform a reasonable assessment of the need for power. Moreover, in the non-regulated environment foreseen by the petitioner, NRC consideration of the need for power may become ''more, not less,

[4] The act of granting a permit or license for a nuclear power plant qualifies as a major Federal action significantly affecting the quality of the human environment; therefore, NEPA applies to the NRC when it engages in such licensing activity.

crucial'' (in the words of a commenter) because a State decisionmaker may no longer conduct need for power assessments. The Commission emphasizes, however, that while a discussion of need for power is required, the Commission is not looking for burdensome attempts by the applicant to precisely identify future market conditions and energy demand, or to develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like in order to establish with certainty that the construction and operation of a nuclear power plant is the most economical alternative for generation of power. *See LES,* 47 NRC at 88, 94.

With regard to the petitioner's discussion of the relevance of the NRC's actions under NEPA in nuclear power plant license renewal, the Commission notes that the significant environmental impacts associated with the siting and construction of a nuclear power plant have already occurred by the time a licensee is seeking a renewed license. The Commission has determined that it is not necessary to consider the need for power during post-construction licensing (issuing and renewing operating licenses). Also, in 10 CFR 51.95(c)(4), the Commission narrowed the NRC's determination for license renewal to ''whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.'' By contrast, in the case of construction of a new nuclear power plant, the NRC must assess the need for power to accurately characterize the cost (*i.e.*, environmental impact) and benefits associated with the proposed action. For these reasons, the license renewal example is not relevant to consideration of need for power issues in new reactor licensing processes.

The petitioner contended that at the time the original licensing decisions and judicial interpretations of NEPA were being made and the NRC was developing a position on its responsibilities under NEPA, the typical applicant for a nuclear power plant was an electric utility regulated by a State public utility commission. By contrast, the petitioner argued that future nuclear power plants will, in all likelihood, be constructed and operated by an unregulated ''merchant generator,'' that will not build and operate a plant unless it believes that there is a need for power or that the facility will generate electricity at a lower cost than the competing facilities. Thus, it would not appear to be burdensome to state the need for the proposed facility. Further, even if this assertion is true, the Commission does not believe that the petitioner's prediction provides a judicially recognized basis for avoiding an agency-prepared determination of the benefits of a proposed action. The petitioner failed to cite any recent judicial decisions which interpret NEPA which hold (or otherwise suggest) that a Federal agency, acting on a project proposal presented by a private sponsor or applicant, need not conduct an independent review of the need for the project, but may simply accept the applicant's assertion with respect to need. In any event, there is no reason to believe that the traditional utility model will disappear. Thus, at most, the petitioner's argument would call for a supplement to the requirements of 10 CFR part 51 to address nuclear power plants built by unregulated, non-electric utility entities, rather than the wholesale elimination of NRC requirements to consider the need for power.

The petitioner has also not shown that other Federal licensing agencies, acting on power generation projects sponsored by private entities, have changed their practices with respect to considering the need for power in preparing EISs supporting their approval decisions. The NRC is also not aware of any such change in agencies' practices.

In conclusion, the petitioner has not demonstrated that consideration of the need for power is no longer a necessary part of the Commission's NEPA obligations for reactor licensing decisions.[5] The need for power must be addressed in connection with new power plant construction so that the NRC may weigh the likely benefits (*e.g.*, electrical power) against the environmental impacts of constructing and operating a nuclear power reactor. The Commission emphasizes, however, that such an assessment should not involve burdensome attempts to precisely identify future conditions. Rather, it should be sufficient to reasonably characterize the costs and benefits associated with proposed licensing actions.

Alternative Energy Sources

It is well established that once the purpose of and need for a proposed Federal action are understood, the agency is expected to follow a rule of reason in deciding which alternatives are ''reasonable'' or ''feasible.'' *See e.g., City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) (per curiam); *Druid Hills Civic Ass'n* v. *Federal Highway Admin.,* 772 F.2d 700, 713 (11th Cir. 1985). Moreover, ''[t]he goals of an action delimit the universe of the action's reasonable alternatives.'' *Citizens Against Burlington,* 938 F.2d at 195.

Similar to the proposal to eliminate NRC consideration of the need for power, the petitioner's proposal to eliminate NRC consideration of alternative energy sources is based on the proposition that, under NEPA, a Federal agency need only consider alternatives that will accomplish the applicant's goal. The Commission agrees with the petitioner's general proposition that a Federal agency, acting not as a proprietor but to approve a project sponsored by a private entity, should ordinarily ''accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.'' *Hydro Resources, Inc.,* CLI–01–4, 53 NRC 31, 55 (2001), *citing Citizens Against Burlington,* 938 F.2d at 197. Thus, the Commission need only consider alternatives that will bring about the ends of the proposed action, *id., accord, City of Grapevine* v. *DOT,* 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied,* 513 U.S. 1043 (1994)), and need not consider alternatives that do not achieve the purpose and need of the applicant. *See City of Angoon,* 803 F.2d at 1021 (''When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved.''), *cert. denied,* 484 U.S. 870 (1987). However, the petitioner failed to explain how the Commission could generically determine the purpose and need of all future applicants for CPs and COLs such that consideration of alternative energy sources would be unnecessary for all future applicants. In the absence of a basis for such rulemaking, the Commission concludes that it will continue the NRC's practice of determining the purpose and need on a case-specific basis. The Commission cautions that when describing the purpose of and need for its proposal, the applicant should not set forth an unreasonably narrow objective of its project, thereby artificially narrowing the scope of alternatives to be considered by the NRC. A Federal agency, acting as a sponsoring agency, would not be permitted to artificially narrow the objective of its action and

[5] The Commission notes that an applicant for an ESP need not include in its application ''an assessment of the benefits (for example, need for power) of the proposed action.'' 10 CFR 52.17(a)(2). Instead, the assessment of benefits of constructing and operating a nuclear power reactor on the ESP site may be deferred to the time (if ever) that the ESP is referenced in an application for a part 52 COL or a part 50 CP.

thereby circumvent the requirement to consider relevant alternatives. *See Citizens Against Burlington,* 938 F.2d at 196, *City of New York* v. *Department of Transportation,* 715 F.2d 732, 743 (1983). The Commission believes that this principle should also apply where a sponsoring entity or applicant seeks the NRC's approval. There may well be circumstances where an entity seeking a CP or COL may be able to establish, consistent with NEPA and current judicial precedents, a narrow statement of purpose and need for the project sufficient to justify excluding from the EIS a consideration of non-nuclear alternative energy sources.

The NRC's current policy is to consider alternative energy sources at the CP stage because alternatives to the construction of a nuclear power plant must be considered before the environmental impacts of construction are realized. The Commission's practice was acknowledged in the statement of consideration for the final rule amending 10 CFR part 51 to bar the consideration of alternative energy source issues in operating license proceedings for nuclear power plants (47 FR 12940; March 26, 1982). The Commission stated that ''in accordance with the Commission's NEPA responsibilities, the need for power and alternative energy sources are resolved in the construction permit proceeding.'' The Commission added that ''[a]lternative energy source issues receive and will continue to receive extensive consideration at the CP stage'' (emphasis added). Thus, the Commission has committed itself to consider alternative energy sources and continues to believe that it should do so to fulfill its NEPA responsibilities. Under 10 CFR part 52, alternative energy sources may be considered at the ESP stage or deferred until the COL stage.

The Commission's position on consideration of alternative energy sources is consistent with other Federal agencies' practices, which have consistently included alternative energy sources when preparing an EIS for a new power generation project. In addition, the NRC's position is consistent with case law. There are many cases involving the adequacy of an agency's alternative energy source review. *See, e.g., Association of Public Agency Customers* v. *Bonneville Power Administration,* 126 F.3d 1158, 1187 (9th Cir. 1997); *Swinomish Tribal Community* v. *FERC,* 627 F.2d 499, 514–16 (D.C. Cir. 1980); *Hawaii County Green Party* v. *Clinton,* 980 F. Supp. 1160, 1167 (D. Haw. 1997). The petitioner did not cite, and the NRC is not aware of, any judicial decision concluding that it is unnecessary for a Federal agency to consider alternative energy sources in licensing a new power generation project.

The petitioner argued, as it did with respect to the need for power, that future ''merchant generators'' will not build and operate a nuclear power plant if there is a superior source of energy. However, the petitioner failed to cite any recent judicial decisions interpreting NEPA which hold that a Federal agency, acting on a project proposal presented by a private sponsor or applicant, need not conduct an independent review of alternatives but may limit its discussion to alternatives that the sponsor or applicant deems reasonable.

The petitioner stated that it is not reasonable to assume that the NRC will be able to identify an alternative energy source that is both feasible and preferable to the choices made by the applicant, but provides no apparent basis for this assertion. The Commission does not agree with the petitioner's assertion. The NRC has extensive experience in identifying and evaluating the feasibility of alternative energy sources in a manner that is sufficient to meet the requirements of NEPA. Indeed, the NRC currently performs such analyses in connection with renewals of nuclear power plant operating licenses (including renewals for plants operated by non-utility entities).

Finally, the petitioner argued that the NRC need not consider alternative energy sources because ''the NRC lacks the authority to compel the applicant to use the alternative * * * [energy] source.'' Petition, at 7. The Commission agrees with the petitioner that the NRC does not have the authority to require the applicant to use an alternative energy source even if there is an alternative with potentially fewer environmental impacts than those associated with operation of the proposed nuclear power plant. However, if the alternative energy source is a reasonable alternative, it should be identified and evaluated. *See Dubois* v. *U.S. Dept. of Agriculture,* 102 F.3d 1273, 1286–87 (1st Cir. 1996), *citing Roosevelt Campobello Int'l Park Committee* v. *United States EPA,* 684 F.2d. 1041 (1st Cir. 1982).

In summary, the petitioner has not shown that it is no longer a necessary part of the Commission's NEPA obligations for the NRC to consider alternative energy sources in rendering decisions regarding reactor licensing.[6]

Conclusion

The petitioner has not shown any change in other Federal agencies' practices, judicial consideration of the NEPA obligations of Federal regulatory agencies responsible for licensing privately proposed actions, or other factors underlying the Commission's current policies for considering the need for power or alternative energy sources that would lead the Commission to conclude that consideration of these issues is no longer a necessary part of the Commission's NEPA obligations for reactor licensing decisions. For applications that could result in the commencement of construction (*i.e.*, CP and COL applications), the NRC continues to believe that the agency should address alternative energy sources in the related EIS (unless, the CP or COL application references an ESP that considered alternative energy sources). The NRC also continues to believe that, for such construction approval applications, the agency should address the benefits assessment (*e.g.,* need for power) in the related EIS.

For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 23rd day of September, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–24474 Filed 9–26–03; 8:45 am]

BILLING CODE 7590–01–P

[6] As previously discussed in footnote [4], it is the Commission's view that § 52.17(a)(2) currently allows the ESP applicant the flexibility to choose to defer consideration of benefits (for example, need for power) of the proposed facility to the time (if ever) that the ESP is referenced by a COL or CP application. In this same context, the ESP applicant need not include an assessment or discussion of alternative energy sources in its environmental report supporting an ESP application. Rather, the applicant may choose to defer consideration of alternative energy sources to the COL or CP application. The Commission's proposed revision to 10 CFR part 52 includes a provision to amend § 52.17(a)(2) to clarify that an ESP applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental report supporting its ESP application or deferring the consideration of alternative energy sources to the time that the ESP is referenced in a licensing proceeding (68 FR 40028, July 3, 2003).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15876; Airspace Docket No. 03–AGL–14]

Proposed Modification of Class E Airspace; Zanesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Zanesville, OH. A Standard Instrument Approach Procedure (SIAP) has been developed for Zanesville Municipal Airport, Zanesville, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace for Zanesville Municipal Airport.

DATES: Comments must be received on or before November 20, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15876/ Airspace Docket No. 03–AGL–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15876/Airspace Docket No. 03–AGL–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Zanesville, OH, for Zanesville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 Zanesville, OH [Revised]

Zanesville Municipal Airport, OH
(Lat. 39°56′40″ N., long. 81°53′32″ W.)

Zanesville VOR/DME
(Lat. 39°56′27″N., long. 83°53′33″W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of Zanesville Municipal Airport and within 7 miles east and 4.4 miles west of the Zanesville VOR/DME 220° radial extending from the VOR/DME to 10.5 miles southwest of the VOR/DME, excluding that airspace within the Cambridge, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 5, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24605 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15834; Airspace Docket No. 03–AGL–13]

Proposed Modification of Class E Airspace; Wilmington Clinton Field, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Wilmington Clinton Field, OH. A Standard Instrument Approach Procedure (SIAP) has been developed for Wilmington Clinton Field, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace for Wilmington Clinton Field.

DATES: Comments must be received on or before November 20, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–15834/ Airspace Docket No. 03–AGL–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday., except Federal holidays. the Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Planes, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggesions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15834/Airspace Docket No. 03–AGL–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date of comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Wilmington Clinton Field, OH, for Wilmington Clinton Field. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keem them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 Willimgton Clinton Field, OH [Revised]

Wilmington Clinton Field, OH
(Lat. 39°30′10″ N., long. 83°51′47″ W.)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of Wilmington Clinton Field, excluding that airspace within the Wilmington, OH, and Dayton, Greene County Airport, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 5, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24604 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2003–15877; Airspace Docket No. 03–AGL–15]

Proposed Establishment of Class E Airspace; Canby, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace at Canby, MN. A Standard Instrument Approach Procedure (SIAP) has been developed for Myers Field, Canby, MN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would establish an area of controlled airspace for Myers Field.

DATES: Comments must be received on or before November 20, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15877/ Airspace Docket No. 03–AGL–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15877/Airspace Docket No. 03–AGL–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comment. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Canby, MN, for Myers Field. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 fee or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Canby, MN [New]

Myers Field, MN
(Lat. 44°43′41″N., long. 96°15′45″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Myers Field.

* * * * *

Issued in Des Plaines, Illinois on September 5, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24603 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15465; Airspace Docket No. 03–AGL–11]

Proposed Modification of Class E Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Chicago, IL. Standard Instrument Approach Procedures (SIAPS) have been developed for Aurora Municipal Airport, Chicago, IL. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would add an extension to the controlled airspace for Aurora Municipal Airport.

DATES: Comments must be received on or before November 13, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–15465/Airspace Docket No. 03–AGL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, the energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15465/Airspace Docket No. 03–AGL–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be download through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.voc* or the Superintendent of Document's Web page at *http://www.acess.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future

NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Chicago, IL, for Aurora Municipal Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from the surface of the earth are published in paragraph 6004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL IL E4 Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41°46′19″ N., long. 88°28′32″ W.)
DuPage VOR/DME
(Lat. 41°53′25″ N., long. 88°21′01″ W.)
I–ARR Localizer
(Lat. 41°46′14″ N., long. 88°27′32″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the DuPage VOR/DME 216° radial extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.6 miles northeast of the airport and within 1.4 miles each side of the I–ARR Localizer west course extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.7 miles west of the airport. This Class E airspace is effective during the specific date and time established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on September 3, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–24601 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter 1

Meeting of the No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking committee.

DATES: The Committee's next meeting will be held October 14–18, 2003. The meeting will begin at 1:30 pm (PST) on Tuesday, October 14 and end at 5:30 pm (PST) on Saturday, October 18.

ADDRESSES: The meeting will be held at the Tempe Mission Palms, 60 East Fifth Street, Tempe, Arizona 85281, telephone (480) 894–1400.

FOR FURTHER INFORMATION CONTACT: Barbara James or Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7241/6569; fax (505) 248–7242; *e-mail bjames@bia.edu* or *ssmith@bia.edu.* We will post additional information as it becomes available on the Office of Indian Education Programs Web site under ''Negotiated Rulemaking'' at *http//www.oiep.bia.edu.*

SUPPLEMENTARY INFORMATION: For more information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http://www.oiep.bia.edu* under ''Negotiated Rulemaking.''

The items for negotiation include: Student Rights/Geographic Boundaries; Tribally Controlled Schools Act/Grants; Adequate Yearly Progress; and Funding and Distribution of Funds. The committee will meet in work groups and in full session during the week. All meetings are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meetings or the work group meetings. Members of the public may make written comments to the Committee by sending them to the NCLB Negotiated Rulemaking Committee, Project Management Office, P.O. Box 1430, Albuquerque, New Mexico 87103. We will provide copies of the comments to the Committee.

The agenda for the October 14–18, 2003, meeting is as follows:

Agenda for No Child Left Behind Negotiated Rulemaking Committee Meeting, October 14–18, 2003, Tempe, Arizona.

Meetings end at 5:30 pm each day.

October 14

1:30 pm

Opening Remarks.

Introductions, Logistics, and Housekeeping.

Approval of summary from Nashville meeting.

Review agenda.
Committee considers consensus on proposed rule language and plain language.
Rewrites, as necessary:
- Geographic Boundaries
- Section 1130
- Adequate Yearly Progress
- Preambles—Tribally Controlled School Act and Adequate Yearly Progress

3:30 pm

Work Group meetings.

October 15

8:30 am

Roll Call and set agenda for day.
Work Group meetings, if necessary.
Committee considers consensus on proposed rule language and plain language.
Rewrites, as necessary:
- Funding
- Preambles

October 16

8:30 am

Roll Call and set agenda for day.
Public comment (30 minutes).
Committee considers consensus on proposed rule language and plain language.
Rewrites, as necessary.

October 17

8:30 am

Roll Call and set agenda for day.
Public comment (30 minutes).
Committee considers consensus on proposed rule language and plain language.

October 18

8:30 am

Roll Call and set agenda for day.
Committee considers consensus on proposed rule language and plain language.
Rewrites, as necessary.
Clarification of next steps.
Evaluations.
Closing remarks.
Brief celebration.

5:30 pm

Adjourn.

Dated: September 24, 2003.

Woodrow W. Hopper, Jr.,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–24569 Filed 9–24–03; 3:13 pm]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA255–0413; FRL–7564–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove revisions to the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from many different sources of air pollution. We are proposing to disapprove SJVUAPCD Rule 4101, a local rule regulating VE, under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action. Previously, EPA proposed to approve Rule 4101.

DATES: Any comments must arrive by October 29, 2003.

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

You can inspect copies of the submitted SIP revisions and the administrative record for EPA's previous proposal at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,
San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226, or via e-mail at *wamsley.jerry@epa.gov.*

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4101	Visible Emissions	11/15/01	12/06/01

On January 22, 2002, EPA found this rule submittal met the completeness criteria in 40 CFR part 51 appendix V.

B. Are There Other Versions of the Rule?

Prior to the SJVUAPCD's formation, eight county-wide air pollution control districts (APCDs) in San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern counties regulated air pollution in California's San Joaquin Valley. In almost all cases, EPA approved and incorporated into the Federal SIP versions of these individual county rules: Rule 401—Visible Emission, Rule 402—Exemptions, and Rule 403—Wet Plumes. Please see the Technical Support Document (TSD) for our previous rulemaking proposal on Rule 4101 for a table of these local rule adoptions and SIP approval dates. On

December 17, 1992, SJVUAPCD adopted Rule 4101 to consolidate and supercede these individual county VE and related rules.

EPA has received two prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992, and CARB submitted the rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001, and CARB submitted the rule to EPA on October 30, 2001. However, EPA has not acted on these versions of Rule 4101. While we can act on only the most recently submitted version listed in Table 1, we have reviewed material provided with these previous submittals.

C. What Is the Purpose of the Submitted Rule Revision?

Visible emission rules with opacity standards are basic components of air quality regulatory programs. Rule 4101 prohibits air pollution that results in greater than 20% opacity. The TSD associated with our prior proposal has more information about Rule 4101 and the county-level rules it replaces.

II. Our Previous Proposed Action, Public Comments, & EPA Responses

On June 10, 2002 (67 FR 39659), EPA proposed to approve Rule 4101 based on an initial assessment that the Rule improved the SIP and was consistent with relevant CAA requirements. For the reasons discussed below, EPA does not intend to take final action on this proposal.

During the comment period for this proposed approval, we received comments from Brent Newell, Center on Race, Poverty, and the Environment, on behalf of El Comite para el Bienestar de Earlimart and the Association of Irritated Residents. We have summarized these comments and provided our responses below.

Comment #1: EPA did not determine whether Rule 4101 implements Best Available Control Measures (BACM), as required by CAA section 189(b) for serious PM–10 nonattainment areas such as SJVUAPCD. The proposed full approval determines that the rule provides Reasonably Available Control Measures (RACM), but neither mentions BACM, nor determines that a 20% opacity threshold fulfills BACM.

Response #1: EPA concurs that BACM under CAA section 189(b) as well as RACM under CAA section 189(a) must be implemented in the San Joaquin Valley PM–10 nonattainment area. EPA has approved general 20% opacity rules in other serious PM–10 nonattainment areas, and does not believe a more stringent general limit is required in Rule 4101 to meet the Act's BACM requirement. See, for example, South Coast Air Quality Management District Rule 401, Great Basin Air Pollution Control District Rule 400, Clark County Air Quality Management Board Rule 26 and Washoe County District Health Department Air Quality Management Division Rule 040.005.

Comment #2: Section 4.4 of Rule 4101 exempts agricultural sources from the 20% opacity requirement. On-field farming operations accounted for 111 tons per day of PM–10 emissions in 2000, 23% of the air basin's total inventory. By exempting such significant emissions, Rule 4101 meets neither RACM, nor BACM requirements.

Response #2: Twenty percent opacity is reasonably available for most or all common industrial sources, as shown by the many Districts in California and many states across the country (*e.g.*, Michigan (see Michigan Administrative Code Rule 336.1301), New Mexico (see New Mexico Administrative Code at Title 20–2–61), Texas (see Texas Administrative Code at Title 30, Part 1–111.111), and Washington (see Washington Administrative Code at Title 173–400–040) that apply a general 20% opacity requirement. It may be possible to demonstrate that higher, lower, or different forms of opacity standards are appropriate RACM and BACM for a specific source. Nonetheless, we concur with the comment that it is inappropriate to exempt broadly the entire agricultural industry from opacity requirements without an analysis of what types of sources are affected and why a 20% opacity requirement is inappropriate. For example, internal combustion engines used by public utilities and excavation industries in San Joaquin are subject to the 20% opacity requirement, while internal combustion engines used for agricultural irrigation are not.

Comment #3: Section 4.11 exempts sources subject to or specifically exempted by Regulation VIII from Rule 4101. The comment references concerns provided previously about agricultural exemptions in Regulation VIII.

Response #3: We believe Rule 4101 would be improved by providing an itemized list of exempt activities in the rule instead of the current general reference to Regulation VIII. However, we do not object to the overall concept of applying BACM-level opacity requirements to some sources via Rule 4101, and other sources via Regulation VIII. A similar structure exists for SJVUAPCD Rule 4661, which establishes general requirements for organic solvents, but exempts those sources regulated by industry-specific rules.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must meet appropriate requirements for nonattainment areas (*see* section 189), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVUAPCD regulates a serious PM–10 nonattainment area (*see* 40 CFR part 81), so Rule 4101 must meet both CAA RACM and BACM requirements.

Guidance and policy documents that we used to define these requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, (November 24, 1987).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988, **Federal Register**.
3. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13540–13541, April 16, 1992.
4. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 59 FR 42008–42015, August 16, 1994.

B. Does the Rule Meet the Evaluation Criteria?

Consolidation of county-specific requirements into Rule 4101 clarifies VE and related requirements within the San Joaquin nonattainment area. However, while the Rule is consistent, in part, with the relevant federal policy and requirements, there are rule provisions which do not meet the evaluation criteria.

C. What Are the Rule's Deficiencies?

Certain provisions of Rule 4101 conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. These deficiencies are discussed below.

1. Section 4.4 is inconsistent with the CAA section 189 RACM and BACM requirements. Its general exemption for agricultural sources should be either deleted altogether, or significantly narrowed in scope and justified.
2. Section 4.10 references California Health and Safety Code (HSC) section 41701. This reference has not been submitted to EPA for incorporation into the applicable SIP, thus it undermines

the clarity and enforceability of the rule and is inconsistent with CAA section 110(a), (i) and (l). SJVUAPCD should do one of three things, remove the exemption, submit the referenced HSC section, or insert specific text from the HSC into Rule 4101. Note that EPA has not reviewed the substance of the HSC.

D. EPA Recommendations To Further Improve the Rule

We have no recommended rule revisions that do not affect EPA's current action.

E. Proposed Action and Public Comment

For the reasons described in section III above and as authorized in section 110(k)(3) of the Act, we are proposing to disapprove SJVUAPCD Rule 4101. If finalized, this action would retain the existing individual county rules within the SIP. Unless EPA approves subsequent SIP revisions correcting the rule's deficiencies within 18 months, sanctions would be imposed according to CAA section 179 and 40 CFR 52.30–32. Our final disapproval would also trigger the FIP requirement under section 110(c).

We will accept comments from the public on this proposed disapproval for the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements. Therefore, because the Federal SIP disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–24558 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–082–0065; FRL–7564–8]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County Ozone, PM–10 and CO Nonattainment Areas; Approval of Revisions to Maricopa County Area Cleaner Burning Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to approve revisions to the Arizona Cleaner Burning Gasoline (CBG) program currently approved in the State implementation plan (SIP). Specifically, we propose to approve revisions that, among other changes, replace Arizona's interim CBG program with a permanent program, amend the wintertime CBG program to limit the types of gasoline that may be supplied, and remove the minimum oxygen content requirement for summertime gasoline.

DATES: Written comments on this proposal must be submitted to EPA at the address below by October 29, 2003.

ADDRESSES: Comments on this proposal should be mailed or e-mailed to: Wienke Tax, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone (520) 622–1622, or *tax.wienke@epa.gov.* Comments may also be submitted via *http://www.regulations.gov.* We prefer to receive comments electronically if possible.

A copy of this document, the EPA technical support document (TSD),[1] and other material relevant to this proposed action are available for public inspection at EPA's Region 9 office during normal business hours. Due to increased security, please call 24 hours ahead of your visit so that we can arrange to have someone meet you.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of the docket is also available for inspection at the address listed below:

Arizona Department of Environmental Quality Library, 1110 West Washington Street, First Floor, Phoenix, Arizona 85007, (602) 771–4335.

Electronic Availability

This document and the TSD are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. (520) 622–1622, e-mail: *tax.wienke@epa.gov.*

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

Table of Contents

I. Summary of Today's Proposal
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I. Summary of Today's Proposal

We propose to approve revisions to the Arizona CBG program that the Arizona Department of Environmental Quality (ADEQ) and the State legislature have adopted since EPA approval of the interim CBG program in 1998. ADEQ has submitted these changes to EPA for approval into the SIP in four separate SIP submittals: SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area, February 1999 (''CBG Permanent Rules''), State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, March 2001 (''Summertime Minimum Oxygen Content Removal''), Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas, August 2001 (''CBG Wintertime Rules''),

[1] See ''Technical Support Document, Notice of Proposed Rulemaking on Arizona State Implementation Plan, Arizona Cleaner Burning Gasoline SIP Revisions'', August 2003.

and Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision, September 2001 (''Technical Supplement'').[2] EPA is proposing to approve the current CBG rule, as codified in Arizona Administrative Code, Title 20, Chapter 2, Article 7, on March 31, 2001 and sections 49–541 (as codified on August 9, 2001), 41–2124 (D) and (K) (as codified on April 28, 2000), 41–2123 (as codified on August 6, 1999), 41–2113(B)(4) (as codified on August 21, 1998), 41–2115 (as codified on July 18, 2000), and 41–2066(A)(2) (as codified on April 20, 2001) of the Arizona Revised Statutes. The key changes from the interim CBG program approved into the SIP in 1998 are described in the following section.

This preamble describes our proposed actions on the Arizona CBG gasoline program and provides a summary of our evaluation of the program. Our detailed evaluation of the program can be found in the TSD that accompanies this proposal.

II. Background to Today's Proposal

A. Air Quality in the Maricopa County Area

The Arizona CBG program, as currently approved in the SIP, applies in Maricopa County. As revised, the program will apply in Maricopa County and portions of Yavapai and Pinal counties that are part of ''Area A'' as defined in Arizona Revised Statutes (ARS) § 49–541, which generally represents the nonattainment area in and around Maricopa County.[3] The Maricopa County nonattainment area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, and 17 other jurisdictions and considerable unincorporated County lands. The area is home to approximately 3 million people.

The area violated both the annual and 24-hour PM–10 standards as well as the one-hour ozone and 8-hour CO standard. In 1990, the area was classified a moderate nonattainment area for ozone, CO, and PM–10. In 1996, because of continuing violations of both PM–10 standards, the area was reclassified to serious for PM–10 and required to submit a serious area plan by December 10, 1997 showing attainment no later than December 31, 2001. The moderate area ozone attainment deadline was November 15, 1996. On November 6, 1997, the area was reclassified to serious for ozone effective December 8, 1997 with an attainment deadline of no later than November 15, 1999. Due to continuing exceedances of the CO standard, the Maricopa County area was redesignated as serious for CO effective August 28, 1996. The nonattainment areas for ozone and CO are the same, and are slightly smaller than the PM–10 nonattainment area.

B. What Is ''Cleaner Burning Gasoline''?

The State CBG fuel program establishes limits on the properties and emission standards for gasoline sold in portions of the State in and around Maricopa County. These standards help reduce emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), carbon monoxide (CO) and particulate matter (PM).

ADEQ first adopted interim CBG regulations on September 12, 1997. The regulations were adopted as interim measures, in accordance with State legislation (HB 2307), as a quick means to replace federal reformulated gasoline (RFG), which had been in effect in the Maricopa County ozone nonattainment area during the summer of 1997.

The interim CBG regulations specified three types of gasoline which roughly corresponded to Phase I federal RFG (''CBG Type 3''), Phase 2 California Air Resources Board (CARB) RFG (''CBG Type 2'') and Phase II federal RFG (''CBG Type 1''). For 1998, gasoline suppliers to the covered area had the option of meeting the requirements for either CBG Type 2 or Type 3. For 1999 and beyond, suppliers were required to provide CBG Type 1 or Type 2. The interim regulations include year-round limits on sulfur, aromatics, olefins, and distillation properties, and seasonal limits on Reid vapor pressure (RVP), oxygen content, and VOC and NO_X performance. The area covered by the interim rule is all of Maricopa County.

ADEQ submitted the interim CBG rule for approval as a revision to the ozone plan for the Maricopa County ozone nonattainment area on September 12, 1997, and as a revision to the State PM–10 plan on January 21, 1998. EPA approved the interim CBG rule SIP revisions on February 10, 1998 (63 FR 6653). In accordance with section 211(c)(4)(C) of the Act, EPA found that the fuel controls were necessary for the Phoenix area to attain the PM–10 and ozone national ambient air quality standards (NAAQS). *Id.* at 6656.

C. Description of Arizona's Changes to the CBG Program

Since 1997, ADEQ has adopted several amendments to its CBG rule in order to make it a permanent rule and to reflect changes made by the State legislature to the fuel provisions of the ARS. Most of these changes involve the removal of SIP-approved requirements and options. The ''CBG Permanent Rules'' include the following key changes from the interim rules currently approved in the SIP:

- The standards for CBG Type 3, which was only available as an option in 1998, have been removed along with references to this fuel option.[4]
- Summertime minimum oxygen content standards for Type 1 gasoline have been removed by specifying a 0.0% minimum oxygen content for April 1 through November 1 in Table 1 of the rule.[5]
- The option of supplying CBG Type 1 during the winter fuel season (November 2 through March 31) was removed by including wintertime fuel specifications that limit suppliers to CBG Type 2 beginning in 2000. With this change, requirements for wintertime NO_X surveys were removed because CBG Type 2 (CARB Phase 2 RFG) does not include a NO_X performance standard.
- The option to provide non-ethanol oxygenated fuel during the winter has been removed by amending the wintertime oxygen content provisions to require fuel containing 10% ethanol, unless the use of a non-ethanol oxygenate is approved by the Director of ADEQ.[6]
- NO_X performance standards for CBG Type 1 and summer survey requirements were amended to conform with changes made by EPA to the

[2] In accordance with section 110(k)(1)(B), these SIP submittals were deemed complete by operation of law six months after submittal.

[3] As further explained herein, the nonattainment areas vary slightly according to the specific nonattainment pollutant. This notice generally refers to all of these areas collectively as the Maricopa County area or nonattainment area.

[4] This change was included in ADEQ's February 1999 ''CBG Permanent Rules'' submittal and reflects changes to the Arizona Revised Statutes by HB 2307.

[5] Additionally, the third footnote to Table 2 of the interim rule was removed. This footnote had provided that CBG Type 2 produced in accordance with the non-averaging option must comply with a per gallon minimum oxygen content requirement of 1.8% by weight from April 1 through October 31. For additional information, see ADEQ's March 2001 ''Summertime Minimum Oxygen Content Removal'' submittal. These changes reflect amendments to the Arizona Revised Statutes by SB 1504.

[6] This change was also included in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal implementing changes to the Arizona Revised Statutes by HB 2347. Should ADEQ waive the 10 percent ethanol requirement, the regulations require a minimum oxygen content of 2.7 percent by weight for non-ethanol blends. Arizona Administrative Code (AAC) R20–2–751(A)(7)(a)(i). Thus winter fuel will continue to contain oxygen in the range of 2.7 to 3.5 percent by weight. See letter from Nancy Wrona, ADEQ and J. Art Macias, ADWM, to Jack Broadbent, EPA, August 12, 2003.

federal RFG regulations in December 1997 (62 FR 68196).[7]

• The area subject to the program was redefined to include all of Maricopa County as well as some western portions of Pinal County and a small part of southern Yavapai County.[8]

III. CAA Requirements for SIP Approval of State Fuel Measures

In determining the approvability of any SIP revision, we must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in CAA section 110 and Title I, Part D and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Section 110(a)(2) contains the general requirements for SIPs (*e.g.*, enforceable emissions limits,[9] ambient monitoring, permitting of new sources, adequate funding).

Of particular relevance for today's action, where EPA is considering revisions to requirements currently approved into the SIP, is the requirement of section 110(l). Section 110(l) allows revisions to a SIP as long as the revisions do not interfere with any applicable requirement of the Act, including requirements concerning attainment and reasonable further progress. Thus, revisions to SIPs must meet the general requirements applicable to all SIPs including: reasonable notice and public hearing; necessary assurances that the implementing agencies have adequate personnel, funding, and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and a description of enforcement methods as required by 40 CFR 51.111. In addition, EPA will consider the effect of these proposed SIP revisions on the ability of the State to attain the NAAQS and demonstrate reasonable further progress.

For SIP revisions addressing certain fuel measures, an additional statutory requirement may apply. CAA section 211(c)(4)(A) generally prohibits state regulation of a motor vehicle fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C), however, provides an exception to this preemption if EPA approves the state requirements in a SIP.

IV. The CBG Program's Compliance With CAA SIP Approval Requirements

The following sections present a condensed discussion of our evaluation of the Arizona CBG program's compliance with applicable CAA requirements for fuels programs. Our complete evaluation is found in the TSD for this proposal. We encourage anyone wishing to comment on this proposal to review the TSD along with today's **Federal Register** notice. A copy of the TSD can be downloaded from our Web site or obtained by calling or writing the contact person listed above.

A. General SIP Requirements

Reasonable Notice and Public Hearing. Sections 110(a)(2) and 110(l) require that SIP measures be adopted by the State after reasonable notice and public hearing. The revisions to the CBG rule contained in the various State SIP submittals all followed reasonable notice and a public hearing. A public hearing for the ''CBG Permanent Rules'' was held on December 11, 1997. A public hearing for the ''CBG Wintertime Rules'' was held on June 8, 1999. A public hearing for the ''Summertime Minimum Oxygen Content Removal'' submittal was held on November 20, 2000.

Enforceable Emission Limits and Program for Enforcement. Section 110(a)(2)(A) and (C) require that measures adopted into the SIP be enforceable and that the State have a program for enforcing the measures. In addition, section 110(a)(2)(E) requires that the State provide necessary assurances that it has adequate personnel, funding, and authority to implement the rules. The CBG rules, as revised, contain an extensive description of the standards and what would constitute a violation, recordkeeping and reporting requirements, the enforcement methods to be used, and the fines to be imposed for noncompliance.

For the most part, the enforcement provisions of the revised CBG rule are the same as the interim rule. The most notable change is the deletion the requirement for wintertime NO_X surveys and the increase of summertime NO_X and VOC surveys. The State deleted the wintertime NO_X survey requirement because, after November 15, 2000, only CBG Type 2 (similar to CARB Phase 2 RFG) could be sold in the Maricopa County nonattainment area in the wintertime, and there are no NO_X performance standards for this gasoline. Consistent with EPA's December 31, 1997 final revisions to the federal RFG program (62 FR 68196), however, the revised rules increase the number of gasoline quality surveys during the summer wherever CBG is sold. We conclude that the CBG program continues to be enforceable with these revisions.

The February 1999 ''CBG Permanent Rules'' submittal contains assurances that ADEQ and the Arizona Department of Weights and Measures (ADWM) have adequate personnel, funding, and authority to implement the rules. These assurances have not changed with the subsequent submittals. We have concluded that the provisions contained in the revised CBG rules confer on the State the requisite authority to enforce compliance.

B. Section 110(l): Interference With Attainment or Reasonable Further Progress

Section 110(l) prohibits EPA from approving a SIP revision if the revision would interfere with any applicable requirement of the Act including requirements concerning attainment and reasonable further progress (RFP). In applying section 110(l) to a particular SIP revision, we need not focus solely on the SIP revision's impact on emissions; rather, we may look at whether the entire SIP still provides for expeditious attainment of the NAAQS. We believe Arizona's CBG program, as modified, will continue to reduce ozone, PM–10 and wintertime CO concentrations, and, along with the other SIP measures, will be consistent with the Maricopa County area's continued or planned attainment of the ozone, PM–10 and CO NAAQS.

Ozone. In April 2001, EPA determined that the Phoenix area had attained the 1-hour ozone standard by its statutory deadline of November 15, 1999. See 66 FR 29230 (May 30, 2001). The area has continued in attainment since 1999 with no recorded exceedances of the 1-hour ozone standard and an overall downward trend in ozone levels. See Letter from Nancy Wrona, ADEQ, to Colleen McKaughan, EPA, June 12, 2002.

Because the area attained the ozone NAAQS, Arizona was not required to submit a serious area attainment demonstration;[10] therefore, there is no

[7] See ADEQ's August 2001 ''CBG Wintertime Rules'' submittal.

[8] The definition of the covered area has been changed in several statutory and regulatory revisions. The final definition submitted for EPA approval is described in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal and reflects statutory changes made by HB 2189.

[9] Approvable regulations must include clear indications of what constitutes a violation, who is liable, and what defenses are available. In addition, penalties must be large enough to both ensure that any economic benefit due to noncompliance would be limited and include an additional penalty for deterrence.

[10] See Memorandum, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, ''Reasonable Further Progress, Attainment

plan against which to judge whether the proposed revisions are consistent with the area's formal plan to attain the standard by its applicable statutory deadline. However, because the area has attained the ozone standard in 1999—and has continued to achieve attainment—under the interim CBG program, we can compare the revised CBG program to the interim CBG program for the purposes of our analysis under section 110(l).[11]

For purposes of ozone attainment, the most substantial change to the CBG program in these proposed revisions is the removal of the two percent minimum oxygen requirement for summertime CBG. This change, however, is not a relaxation in the SIP because the SIP-approved regulations already allowed the use of non-oxygenated CBG (CBG Type 2 produced under the averaging option) during the summer control period. Thus, the fuel options allowed under the revised State rules will be no less stringent than those allowed under the current SIP.

While we find on the face of the regulations that section 110(l) is satisfied and there will be no relaxation in the SIP, we have worked with ADEQ to assess the changes in emissions and ozone concentrations likely to occur as a result of these changes to the CBG program. Arizona's technical analysis supporting the March 2001 ''Summertime Minimum Oxygen Content Removal'' submittal indicated that the removal of the minimum oxygen content requirement could result in increases in VOC and CO emissions and a decrease in NO_X emissions as compared to the emissions from gasoline provided to the area during the period of 1997 to 1999 (the period in which the area first attained the ozone NAAQS). These changes in emissions are not likely to interfere with requirements for attainment because the projected emissions changes are relatively small, and Phoenix has had a general downward trend in ambient ozone concentrations from 1996 to 2002, allowing a buffer for small changes in emissions without necessarily jeopardizing attainment.

To confirm this conclusion, we reevaluated ADEQ's emissions modeling and used these results to assess the impact these emission changes may have on ambient ozone concentrations. Our modeling generated speciated emissions estimates likely to result from the changes to the CBG requirements. We provided these speciated emissions estimates to the State and the State performed modeling using the Urban Airshed Model (UAM). The modeling predicted a four percent reduction in peak ozone for the types of non-oxygenated gasoline likely to be supplied to the area under the revised rules. The modification to Arizona's summertime gasoline program, therefore, will not interfere with requirements related to attainment and maintenance of the ozone NAAQS in the Maricopa County area.[12]

In 2001, we determined the area had attained the 1-hour ozone standard and therefore the RFP requirements of 182(c)(2)(B) for serious ozone nonattainment areas no longer applied to the Maricopa County area. 66 FR 29230 (May 30, 2001). As a result, there is no continuing obligation for the State to show further VOC reductions. The revisions therefore do not need to be evaluated against these RFP requirements to satisfy section 110(l).[13]

Carbon monoxide. For CO attainment, we propose to conclude that the revisions to the CBG program are consistent with the area's plan for attainment. In March, 2001, Arizona submitted a revised serious nonattainment area CO plan for the Phoenix area. This plan relied in part on the CBG program being proposed for approval today to demonstrate both progress toward and attainment of the CO standard in the area. See Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area, Maricopa Association of Governments, March 2001, Chapter 9.[14] Therefore, these revisions to the CBG program are consistent with and support the development of the Phoenix area's plan for meeting the Act's attainment and RFP requirements.

Particulate Matter. As with CO, the proposed revisions are consistent with the area's plan for attaining the NAAQS and satisfying RFP. EPA approved the Maricopa County PM–10 Serious Area Plan on July 25, 2002. 67 FR 48718. The area's PM–10 plan includes CBG as an on-road mobile source control measure to meet Best Available Control Measure (BACM) and Most Stringent Measure (MSM) requirements. The plan reflects the statutory revisions to the interim CBG program being proposed in today's action. See, *e.g.*, EPA, Technical Support Document for Approval of the Serious Area PM–10 State Implementation Plan, at 122–23 (Jan. 14, 2002).[15] Because the revisions to the interim CBG program are assumed in the demonstration of attainment and RFP for PM–10, we conclude the proposed revisions satisfy the requirements of 110(l).[16]

C. Findings Under Section 211(c)(4)

In our approval of the CBG interim rule and Arizona's 211(c)(4)(C) waiver request (63 FR 6653 (Feb. 10, 1998)), we approved CBG Types 2 and 3 for 1998 and CBG Types 1 and 2 for 1999 and beyond, finding these fuel requirements necessary to achieve the NAAQS in the Maricopa County area. The proposed revisions to the CBG rule would not add new fuel requirements to the SIP. The revisions remove currently SIP-approved requirements and compliance options. We do not read section 211(c)(4)(A) of the Act to prevent States from making changes to SIP-approved fuel programs where these changes would not have changed EPA's original assessment of the necessity of the State fuel controls. Because we find Arizona's changes to the CBG program are therefore within the scope of the previous finding, we conclude that a new finding under 211(c)(4)(C) is not required by the Act.

Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995.

[11] See *Hall* v. *EPA*, 273 F.3d 1146, 1160 n.11 (9th Cir. 2001) (noting ''no relaxation'' test would ''clearly be appropriate in areas that achieved attainment under preexisting rules'').

[12] These reductions in peak 1-hour ozone concentrations should also ensure the fuel changes will not interfere with achievement of the 8-hour ozone NAAQS.

[13] We need not resolve whether 110(l) requires EPA to evaluate the consistency of SIP revisions with past RFP demonstrations once EPA finds the area has attained the ozone NAAQS because, since adoption of the 1999 15 percent Rate of Progress Plan (ROP), additional VOC controls have become effective in the Maricopa County area to offset any potential changes in VOC emissions resulting from the proposed revisions. For additional discussion, please refer to the TSD.

[14] ADEQ estimates that the revisions to the wintertime program will provide a further reduction in total CO emissions of around 33 metric tons per day over those achieved by the program as implemented prior to 1999. See ''Wintertime CBG'' Submittal, Enclosure 3.

[15] We note that the 1998 approval of the interim Arizona CBG program claimed PM–10 reductions from the program's NO_X performance standard (63 FR 6653) and the proposed revisions do not change these NO_X performance standards. ADEQ claims additional PM–10 emission reductions will be achieved by the proposed revisions to the wintertime oxygen content requirement. In the Background Information Document supporting ADEQ's August 2001 ''CBG Wintertime Rule'' submittal, ADEQ claims the change to a 3.5 percent oxygen content requirement will reduce PM–10 emissions by 2.1 metric tons per day.

[16] With respect to PM2.5, EPA AIRS data indicates that the Phoenix area has not violated the 24-hour or annual PM2.5 NAAQS through 2002, and is not expected to be nonattainment for PM2.5.

VI. Summary Statement About Proposed Approval

We have evaluated the submitted SIP revisions and have determined that they are consistent with the CAA and EPA regulations. Therefore, we are proposing to approve the Arizona CBG program into the Arizona SIP under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D to address ozone, CO and PM–10 nonattainment in the Maricopa County area.

Specifically, we propose to approve the following elements of the CBG program: AAC R20–2–701, R20–2–716, R20–2–750 through 762, and Title 20, Chap. 2, Art. 7, Tables 1 and 2 (Mar. 31, 2001); and ARS §§ 49–541 (as codified on August 9, 2001), 41–2124(D) and (K) (as codified on April 28, 2000), 41–2123 (as codified on August 6, 1999), 41–2113(B)(4) (as codified on August 21, 1998), 41–2115 (as codified on July 18, 2000), and 41–2066(A)(2) (as codified on April 20, 2001).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to a state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Statutory and Executive Order Review

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed action does not involve information collection by EPA, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. While state fuel controls are preempted in certain circumstances, these issues are not raised by this proposed SIP revision. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental regulations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 4, 2003.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 03–24557 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 432

[FRL–7565–2]

RIN 2040–AD56

Extension of Comment Period on the Notice of Data Availability for the Effluent Limitations Guidelines and New Source Performance Standards for the Meat and Poultry Products Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 13, 2003, EPA published a Notice of Data Availability for the proposed effluent limitations guidelines and standards for the meat and poultry products (MPP) point source category (68 FR 48472). The notice presented a summary of new data and described how EPA might use the data to develop final MPP regulations. This action extends the comment period for the Notice of Data Availability to October 14, 2003.

DATES: Comments on the Notice of Data Availability will be accepted through October 14, 2003. Comments provided electronically will be considered timely if they are submitted by 11:59 p.m. Eastern Time on October 14, 2003.

ADDRESSES: Public comments regarding this document should be mailed to Water Docket, U.S. Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0014, or submitted electronically at *http://www.epa.gov/edocket*.

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: In February 2002, EPA proposed effluent limitations guidelines and standards for wastewater discharges from meat and poultry processing facilities (67 FR 8582, February 25, 2002). The proposed regulation included revised effluent standards for wastewater discharges associated with the operation of new and existing meat processing and independent rendering facilities, and also proposed new effluent limitations for poultry slaughtering and poultry further processing facilities. 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.

On August 13, 2003, EPA published a Notice of Data Availability for the proposed rule (68 FR 48472). The Notice of Data Availability presented a summary of data received in comments and additional data collected by EPA along with descriptions of how the data may be used by EPA in developing final regulations. The comment period for the Notice of Data Availability was originally scheduled to end on September 29, 2003. This action extends the comment period to October 14, 2003.

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit C of the **SUPPLEMENTARY INFORMATION** section of the August 13, 2003 **Federal Register** notice. If you have questions, consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: September 23, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–24770 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 030716175–3187–02; I.D.070303A]

RIN 0648–AQ77

Endangered and Threatened Species: Advance Notice of Proposed Rulemaking to Designate Critical Habitat for 20 Listed Evolutionarily Significant Units of Pacific Salmon and Steelhead

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

ACTION: Advance Notice of Proposed Rulemaking; request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) will be preparing critical habitat designation proposals for five species of Pacific salmon and steelhead (Oncorhynchus spp.) listed under the Endangered Species Act (ESA). The designations will address 20 evolutionarily significant units (ESUs) of these species in the states of WA, OR, ID, and CA. This advance notice of proposed rulemaking (ANPR) identifies issues for consideration and evaluation, and solicits comments regarding these issues as well as information regarding the areas and species under consideration.

DATES: Comments and information regarding the suggested designation process and areas being considered for designation may be sent to the appropriate address or fax number (*See* **ADDRESSES**), no later than 5 p.m. on November 13, 2003.

ADDRESSES: Comments may be sent to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments may also be sent via facsimile (fax) to 503 230–5435 or submitted on the Internet at *http://www.nmfs.noaa.gov/ibrm*.

FOR FURTHER INFORMATION CONTACT: Steve Stone, NMFS Northwest Region (WA, OR, and ID), 503/231–2317; Craig Wingert, NMFS Southwest Region (CA), 562/980–4021; or Lamont Jackson, NMFS Office of Protected Resources, Silver Spring, MD, 301/713–1401.

SUPPLEMENTARY INFORMATION:

Rulemaking Background

NMFS is responsible for determining whether species, subspecies, or distinct population segments of Pacific salmon and steelhead are threatened or endangered and which areas constitute critical habitat for them under the ESA (16 U.S.C. 1531 *et seq.*). To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined in section 3 to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The agency has determined that a group of Pacific salmon or steelhead populations qualifies as a distinct population segment if it is substantially reproductively isolated and represents an important component in the evolutionary legacy of the biological species. A group of populations meeting these criteria is considered an ''evolutionarily significant unit'' (ESU) (56 FR 58612, November 20, 1991). In its ESA listing determinations for Pacific salmon and steelhead, NMFS has treated an ESU as a ''distinct population segment.'' To date NMFS has identified 26 ESUs as threatened or endangered under the ESA (*see* 50 CFR 223.203 and 224.101).

Section 4(b)(2) of the ESA requires NMFS to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary [of Commerce] discretion to exclude any area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary's discretion is limited, as he may not exclude areas if it ''will result in the extinction of the species.''

The ESA defines critical habitat under section 3(5)(A) as:

> ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed . . ., on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, section 7 of the ESA requires federal agencies to ensure they do not fund, authorize or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that federal agencies ensure their actions do not jeopardize the continued existence of listed species.

On February 16, 2000, NMFS published a final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead (65 FR 7764). The designations included more than one hundred and fifty river subbasins in WA, OR, ID, and CA. Within each occupied subbasin, NMFS designated as critical habitat those lakes and river reaches accessible to listed fish along with the associated riparian zone, except for reaches on Indian land. Areas considered inaccessible included areas above long-standing natural impassable barriers and areas above impassable dams, but not areas above ephemeral barriers such as failed culverts.

In considering the economic impact, NMFS determined that the critical habitat designations would impose very little or no additional requirements on federal agencies beyond those already imposed by the listing of the species themselves. The ESA's prohibition against adversely modifying critical habitat applies only to federal agencies, which are also prohibited from jeopardizing the continued existence of listed species. NMFS reasoned that since it was designating only occupied habitat, there would be few or no actions that adversely modified critical habitat that also did not jeopardize the continued existence of the species. Therefore, there would be no economic impact as a result of the designations (65 FR 7764, 7765, February 16, 2000).

The National Association of Homebuilders (NAHB) challenged the designations in District Court in Washington, D.C. as having inadequately considered the economic impacts of the critical habitat designations (*National Ass'n of Homebuilders* v. *Evans*, 2002 WL 1205743 No. 00–CV–2799 (D.D.C.). NAHB also challenged NMFS' designation of Essential Fish Habitat (EFH) (Pacific Coast Salmon Fishery Management Plan, 2000). While the NAHB litigation was pending, the Court of Appeals for the 10th Circuit issued its decision in *New Mexico Cattlegrowers' Association* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001) (NMCA). In that case, the Court rejected the U.S. Fish and Wildlife Service's (FWS) approach to economic analysis, which was similar to the approach taken by NMFS in the final rule designating critical habitat for 19 ESUs of west coast salmon and steelhead. The Court ruled that ''Congress intended that the FWS conduct a full analysis of all of the economic impacts of a critical habitat

designation, regardless of whether those impacts are attributable co-extensively to other causes.'' Subsequent to the 10th Circuit decision, NMFS entered into and sought judicial approval of a consent decree resolving the NAHB litigation. That decree provided for the withdrawal of critical habitat designations for the 19 salmon and steelhead ESUs and dismissed NAHB's challenge to the EFH designations. The District Court approved the consent decree and vacated the critical habitat designations by Court order on April 30, 2002 (*National Ass'n of Homebuilders* v. *Evans*, 2002 WL 1205743 (D.D.C. 2002).

Related Rulemaking and Litigation

At the same time NAHB was challenging the critical habitat designations, other plaintiffs were challenging NMFS' listing decision for Oregon Coast coho salmon. In *Alsea Valley Alliance* v. *Evans* (143 F. Supp. 2d 1154 (D. Ore. 2001)) (Alsea), the U.S. District Court in Eugene, OR, set aside NMFS' 1998 ESA listing of the Oregon Coast coho salmon ESU, and ruled that NMFS' treatment of hatchery populations within this ESU was arbitrary and capricious. Specifically, the Court found that NMFS' 1998 listing of Oregon Coast coho salmon made improper distinctions below the level of an ESU by excluding hatchery populations from listing protection even though they were determined to be part of the same ESU as the listed naturally spawned populations. NMFS subsequently acceded to the District Court's decision and did not appeal the ruling. However, on December 14, 2001, the U.S. Court of Appeals for the Ninth Circuit (Appeal No. 01–36071) granted intervenors-appellants an emergency motion to stay the district court judgment in the *Alsea* decision. Accordingly, the Oregon Coast coho salmon ESU remains listed as a threatened species pending final disposition of the appeal.

In light of the *Alsea* decision, NMFS announced it would reconsider its listing determinations for all salmon and steelhead ESUs affected by the ESA interpretive issues raised by the Court's decision (67 FR 6215, February 11, 2002; 67 FR 79898, December 31, 2002). The agency also accepted several petitions to reconsider its listing of other ESUs based on the Alsea decision (67 FR 6215, February 11, 2002; 67 FR 48601, July 25, 2001). NMFS' schedule for reconsidering these listing decisions anticipates proposing any revised listing determinations for all 26 listed ESUs (and one candidate ESU) by March 2004. Since NMFS also intends to list those hatchery populations that are part of an ESU, many of the currently listed ESUs may be altered as a result of the ongoing status reviews, which could also affect the designation of critical habitat for such ESUs.

Issues for Consideration and Evaluation

Section 4(a)(3) of the ESA requires NMFS to designate critical habitat for threatened and endangered species. NMFS is currently in the information-gathering phase, compiling information to prepare critical habitat proposals for the 19 ESUs vacated by the Court in April 2002 as well as the Northern California steelhead ESU listed as threatened on June 7, 2000 (65 FR 36074). If new information warrants, the agency also may later revise, subject to appropriate regulatory procedures, existing critical habitat designations for six ESUs (Sacramento River winter-run chinook, Central California coast coho, Southern Oregon/Northern California coasts coho, Snake River sockeye, spring/summer chinook, and fall chinook salmon) that were not subject to the Court's decision in *National Ass'n of Homebuilders* v. *Evans*.

Sections 3, 4(a) and 4(b) of the ESA suggest a number of questions the agency should consider when designating critical habitat for Pacific salmon and steelhead:

What areas were occupied by the species at the time of listing?

What physical and biological features are essential to the species' conservation?

Are those essential features ones that may require special management considerations or protection?

Are areas outside those currently occupied ''essential for conservation''?

What are the benefits to the species of critical habitat designation?

What economic and other relevant impacts would result from a critical habitat designation, even if coextensive with other causes such as listing?

What is the appropriate geographic scale for weighing the benefits of exclusion and benefits of designation?

What is the best way to determine if the failure to designate an area as critical habitat will result in the extinction of the species concerned?

Answering these questions involves a variety of biological and economic considerations. Because these considerations are complex and there is considerable controversy surrounding critical habitat designations in general, NMFS is issuing this Advance Notice of Proposed Rulemaking to solicit information before issuing a proposed rule. During the information-gathering phase, NMFS is seeking public input and information (*see* ''Information Solicited'' below) and will gather and analyze the best available scientific data to support critical habitat designations. NMFS will continue to meet with comanagers and other stakeholders to review this information and the overall designation process. NMFS will then initiate rulemaking with the publication of a proposed designation of critical habitat, opening a period for public comment and the opportunity for public hearings. Information derived from NMFS' ongoing reconsideration of the listing determinations will also be important for defining the status of the relevant ESUs and informing the future critical habitat designations. NMFS is also undertaking recovery planning for the currently listed ESUs. Information developed in the recovery planning process will also inform any proposed critical habitat designations for the 20 ESUs.

Pacific Salmon and Steelhead Biology and Habitat Use

Pacific salmon and steelhead are anadromous fish, meaning adults migrate from the ocean to spawn in freshwater lakes and streams where their offspring hatch and rear prior to migrating back to the ocean to forage until maturity. The migration and spawning times vary considerably between and within species and populations (Groot and Margolis, 1991). At spawning, adults pair to lay and fertilize thousands of eggs in freshwater gravel nests or ''redds'' excavated by females. Depending on lake/stream temperatures, eggs incubate for several weeks to months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles called ''fry'' and begin actively feeding. Depending on the species and location, juveniles may spend from a few hours to several years in freshwater areas before migrating to the ocean. The physiological and behavioral changes required for the transition to salt water result in a distinct ''smolt'' stage in most species. On their journey juveniles must migrate downstream through every riverine and estuarine corridor between their natal lake or stream and the ocean. For example, smolts from Idaho will travel as far as 900 miles from their inland spawning grounds. En route to the ocean the juveniles may spend from a few days to several weeks in the estuary, depending on the species. The highly productive estuarine environment is an important feeding and acclimation area for juveniles preparing to enter marine waters.

Juveniles and subadults typically spend from one to five years foraging over thousands of miles in the North Pacific Ocean before returning to spawn. Some species, such as coho and chinook salmon, have precocious life history types (primarily male fish) that mature and spawn after only several months in the ocean. Spawning migrations known as ''runs'' occur throughout the year, varying by species and location. Most adult fish return or ''home'' with great fidelity to spawn in their natal stream, although some do stray to non-natal streams. Salmon species die after spawning, while steelhead may return to the ocean and make repeat spawning migrations.

This complex life cycle gives rise to complex habitat needs, particularly during the freshwater phase (*see* review by Spence *et al.*, 1996). Spawning gravels must be of a certain size and free of sediment to allow successful incubation of the eggs. Eggs also require cool, clean, and well-oxygenated waters for proper development. Juveniles need abundant food sources, including insects, crustaceans, and other small fish. They need places to hide from predators (mostly birds and bigger fish), such as under logs, root wads and boulders in the stream, and beneath overhanging vegetation. They also need places to seek refuge from periodic high flows (side channels and off channel areas) and from warm summer water temperatures (coldwater springs and deep pools). Returning adults generally do not feed in fresh water but instead rely on limited energy stores to migrate, mature, and spawn. Like juveniles, they also require cool water and places to rest and hide from predators. During all life stages salmon and steelhead require cool water that is free of contaminants. They also require migratory corridors with adequate passage conditions (timing, water quality, and water quantity) to allow access to the various habitats required to complete their life cycle.

The homing fidelity of salmon and steelhead has created a meta-population structure with discrete populations distributed among watersheds (McElhany *et al.*, 2000). Low levels of straying result in regular genetic exchange among populations, creating genetic similarities among populations in adjacent watersheds. Maintenance of the meta-population structure requires a distribution of populations among watersheds where environmental risks (e.g., from landslides or floods) are likely to vary. It also requires migratory connections among the watersheds to allow for periodic genetic exchange and alternate spawning sites in the case that natal streams are inaccessible due to natural events such as a drought or landslide.

Areas Occupied by the Species at the Time of Listing

As described in ESA section 3(5)(A)(i), the agency will assemble the best available information to identify those ''specific areas within the geographical area occupied by the species at the time it is listed . . . on which are found those physical or biological features . . . (I) essential to the conservation of the species and (II) which may require special management considerations or protection.''

The ESA specifies that critical habitat is that habitat occupied by the species ''at the time it is listed'' (ESA section 3(5)(A)(i)). Due to their anadromous, highly migratory life cycle and the presence of multiple year classes or ''cohorts,'' fish from a particular ESU are widely distributed at the time of listing. For example, at the time an ESU is listed the eggs from one cohort may be incubating in stream gravel while older cohorts are rearing in an estuary and still others are foraging in the North Pacific Ocean. Thus, the geographic area occupied is a vast and diverse array of habitats occupied simultaneously by various cohorts and life stages. NMFS' ESA regulations relevant to describing a ''geographical area'' and ''specific areas'' state that ''each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area'' (50 CFR 424.12). These regulations require that NMFS also identify the state(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. However, the regulations note that such political units typically would not constitute the boundaries of critical habitat. In addition, the regulations state that ephemeral reference points (e.g., trees, sand bars) shall not be used in defining critical habitat. Distribution information for Pacific salmon and steelhead is available in three general formats: (1) maps and databases identifying specific river segments (i.e., data mapped as line segments); (2) maps and databases identifying entire watersheds (i.e., data mapped as polygons); and (3) textual descriptions. During the information-gathering phase, NMFS is seeking information in all available formats.

NMFS will seek the best scientific information available to make the designations as precise as practicable. Most of the data sources that NMFS has reviewed to date indicate that fish distribution can be mapped for most watersheds at a scale of 1 to 100,000 or greater (*see* StreamNet, 2003). At this coarse scale, numerous streams and stream reaches that may contain physical and biological features essential to conservation do not appear (Roni et al., 1997; StreamNet, 2003). Also, fish distribution maps are often based on a mix of empirical data (i.e., fish observations) and best professional judgement, and may not reflect the species' actual distribution in many stream reaches that have never been or have only occasionally been surveyed. During the information-gathering phase, NMFS is seeking information that will allow it to map specific river reaches, using reference points and lines as found on standard topographic maps, that (1) are currently occupied by the species and (2) contain essential physical and biological features. NMFS will seek input as to the accuracy and suitability of this approach, and the applicability of other approaches.

NMFS has not designated marine areas in previous critical habitat designations for salmon, except in the case of Puget Sound chinook salmon and Hood Canal summer-run chum salmon. This exclusion was due to the lack of identifiable special management considerations affecting marine habitat features (65 FR 7764, 7771, February 16, 2000). However, in the February 2000 rulemaking the agency noted that it would be re-evaluating this issue, especially in light of the recent marine area designations of EFH for Pacific salmon (Pacific Coast Salmon Fishery Management Plan, 2000). This notice seeks information on habitat in marine as well as freshwater areas.

Physical and Biological Features Essential for Conservation

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at section 50 CFR 424.12(b) state that the agency ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection (hereafter also referred to as ''Essential Features''). Pursuant to the regulations, such requirements include, but are not limited to the following: (1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) Habitats that are protected from disturbance or are representative of the historic

geographical and ecological distributions of a species. These regulations go on to emphasize that the agency shall focus on essential features within the specific areas considered for designation. These features ''may include, but are not limited to, the following: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.''

The 20 ESUs under consideration comprise five species, each of which has unique life history characteristics and habitat requirements. However, these characteristics/requirements depend on a common set of physical and biological features that are essential to the conservation of each species. Information supporting the identification of essential features is contained in a robust body of scientific literature addressing salmonid life history and habitat characteristics (*e.g., see* Everest *et al.*, 1985; Bell, 1986; Groot and Margolis, 1991; FEMAT, 1993; Spence *et al.*, 1996). Also, NMFS is applying knowledge gained from over a decade's experience with thousands of ESA section 7 consultations on listed salmonids to identify these features. NMFS has developed a decision matrix (NMFS, 1996) that describes general parameters and characteristics of most of the essential features now under consideration in critical habitat designations. During the information-gathering phase, NMFS seeks input on the following characterization of essential features.

Essential features for the listed ESUs of salmon and steelhead include sites essential to support one or more life stages of a population necessary to the conservation of the ESU. These sites in turn contain generic features that contribute to their conservation value for the ESU. Specific types of sites and their generic features include:

(1) Freshwater spawning sites with sufficient water quantity and quality and adequate substrate to support spawning, incubation and larval development;

(2) Freshwater rearing sites with sufficient water quantity and floodplain connectivity to form and maintain physical habitat conditions and allow salmonid development and mobility; sufficient water quality to support growth and development; food and nutrient resources such as terrestrial and aquatic invertebrates, and forage fish; and natural cover such as shade, submerged and overhanging large wood, log jams, beaver dams, aquatic vegetation, large rocks and boulders, side channels and undercut banks;

(3) Freshwater migration corridors free of obstruction and excessive predation, with adequate water quantity to allow for juvenile and adult mobility; cover, shelter and holding areas for juveniles and adults; and adequate water quality to allow for survival;

(4) Estuarine areas that provide uncontaminated water and substrates; food and nutrient sources to support growth and development; and connected shallow water areas and wetlands to cover and shelter juveniles; and

(5) Marine areas with sufficient water quality to support salmonid growth, development, and mobility; food and nutrient resources such as marine invertebrates and forage fish; and nearshore marine habitats with adequate depth, cover, and marine vegetation to provide cover and shelter.

The conservation value of a site depends on (1) the importance of the populations associated with a site to the ESU conservation, and (2) the contribution of that site to the conservation of the population either through demonstrated or potential productivity of the area.

Special Management Considerations or Protection

Coupled with the identification of essential features, during the information-gathering phase NMFS seeks input on whether the above essential features may require special management considerations or protection. For example, numerous special management considerations relate to fish passage conditions, including methods and procedures aimed at maintaining sufficient water flows and preventing or minimizing impacts from manmade barriers such as dams and culverts. Similarly, essential natural cover elements such as shade and large wood involve a variety of land management considerations. NMFS will document the special management considerations and protection associated with the essential features and expects to relate these to the factors affecting the species and/or critical habitat during formal rulemaking (*see* ''Schedule and Contents of Rulemaking).

Areas outside the Geographical Area Occupied by the Species

Section 3(5)(A)(ii) of the ESA defines critical habitat to include specific areas outside the geographical area occupied by the species only if the Secretary determines them to be essential for the conservation of the species. Section 3(3) of the ESA defines conservation as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' NMFS' ESA regulations at 424.12(e) state that the agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' NMFS would thus include areas outside the occupied geographical area only if areas within the occupied geographical area were not adequate to support conservation. In the previous designations of critical habitat (65 FR 7764, February 16, 2000), NMFS did not consider designations for areas outside the geographical areas occupied by the species. The agency is also seeking information on the adequacy of the currently occupied habitat to support conservation of the listed ESUs, and whether areas that are unoccupied might be ''essential for conservation.''

Determining Conservation Value

Section 4(b)(2) of the ESA requires that the Secretary, before designating any particular area as critical habitat, weigh the benefit of excluding the area from designation against the benefit of including it in the designation. Accordingly, during the information-gathering phase, NMFS is seeking input on the benefit of designating areas as critical habitat. In particular, NMFS seeks information on the conservation value of potential critical habitat based on the quality and quantity of the essential feature(s) and on the difficulty of restoring the quality and quantity where those features have been limited or degraded. Federal agencies, states, tribes and others have already compiled a great deal of information on the historic and present importance of different areas to salmonid conservation. Some general types of information include stream habitat inventories, juvenile and spawning fish surveys, redd and dam counts, angler harvest records, and tagged fish recoveries. In some cases it may not be known whether an area was historically productive. Areas might also be considered to have a high potential if they possess characteristics of other highly productive areas.

NMFS will also gather analyses provided by the NMFS Technical Recovery Teams. These Teams have been formed for several recovery planning areas covering most of the presently listed ESUs. The Teams first identify the population structure of the ESU and provide guidance on what

constitutes recovery for each population. The Teams next provide guidance on the numbers and distribution of recovered populations that would constitute a healthy ESU, as well as guidance on the status of populations that will not be recovered but still have a role to play in overall ESU health.

NMFS also seeks input on the best methods for evaluating the conservation value of potential critical habitat areas. NMFS is interested in information relevant to monetizing the conservation value of an area, or to ranking the conservation benefits in an ordinal manner. Finally, NMFS is seeking input on what approaches would allow it to determine if excluding an area from designation will result in the extinction of the species.

Determining Economic and other Relevant Impacts

Section 4(b)(2) of the ESA requires the Secretary to consider the ''economic impact, and any other relevant impact,'' of designating a particular area as critical habitat. During the information-gathering phase, NMFS seeks information regarding the economic benefits of excluding an area from the critical habitat designation and the economic benefits of including an area as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), NMFS seeks information that would allow it to monetize these effects to the extent possible, as well as information on qualitative impacts to economic values. NMFS is also seeking information on any other impacts of designating critical habitat.

The Appropriate Geographic Scale for Weighing the Benefits of Exclusion and Benefits of Inclusion

There are thousands of miles of rivers and streams presently occupied by listed salmon and steelhead in OR, WA, ID, and CA. Before designating any ''particular area'' as critical habitat NMFS must balance the benefit of excluding that area against the benefit of including it in the designation (ESA section 4(b)(2)). To manage this task, streams and rivers must be grouped in a manner that allows for meaningful analysis. As discussed in more detail above, salmon populations tend to divide along watershed boundaries. Through the mapping efforts of the U. S Geological Survey (USGS), watersheds can be mapped across most of the salmon and steelhead range at a fairly fine scale, relative to the broad distribution of the species. NMFS seeks input on the relevance of using watersheds as a unit of analysis for the balancing test. In some cases it may be useful to consider habitat units at a finer scale than the watershed, for example where an economic impact or a conservation benefit can be isolated to a stream or river segment. NMFS therefore also seeks input on approaches to isolating impacts of designation at a finer scale than the watershed.

Process and Schedule

In response to a complaint filed by the Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, the Center for Biological Diversity, the Oregon Natural Resources Council, the Pacific Rivers Council, and the Environmental Protection Information Center alleging NMFS's failure to timely designate critical habitat, NMFS recently filed with the D.C. District Court an agreement resolving that litigation and establishing a schedule for designation of critical habitat. The schedule provides for submission by June 30, 2004 to the **Federal Register** for publication the proposed rule(s) designating critical habitat for those of the 20 ESUs that are included on the list of threatened and endangered species as of June 30, 2004. Additionally, the schedule provides for submission by January 18, 2005 to the **Federal Register** for publication the final rule(s) designating critical habitat for the 20 ESUs that are included on the lists of threatened and endangered species as of January 18, 2005. The District Court approved the agreement on September 12, 2003.

As described in current agency regulations (50 CFR 424.16), NMFS anticipates that the proposed rulemaking will contain text detailing the proposal, a summary of the data used and its relationship to the proposal, a summary of factors affecting the species and/or critical habitat, citations of pertinent information sources, a map of the critical habitat, an economic report, and an explanation of a 4(b)(2) process and any areas proposed for exclusion. To the maximum extent practicable, the proposal will also include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify the critical habitat, or may be affected by the designation. Products to be made available to the public at this step also include access to maps depicting the areas proposed for designation and relevant agency biological and economic analyses supporting the rulemaking. NMFS also will provide the requisite comment period and opportunity for public hearings on the proposed rule.

In addition to publication in the **Federal Register**, NMFS will provide the critical habitat proposal to, and invite comments from, affected states and counties (and equivalent jurisdictions) and scientific organizations as well as any federal agencies, tribal governments, local authorities, or private individuals or organizations known to be affected by the proposed rule. The agency will also publish a summary of the proposed rule in a newspaper of general circulation in affected areas. In accordance with a joint NMFS/FWS policy published on July 1, 1994 (59 FR 34270), NMFS will also seek the expert opinions of at least three appropriate and independent specialists. The purpose of such review is to ensure that the critical habitat designations are based on scientifically sound data, assumptions, and analyses. NMFS will send these peer reviewers copies of the proposed rule (and other documentation as needed) immediately following publication in the **Federal Register**. The agency will invite each peer reviewer to comment independently, during the public comment period, on the proposed designations and will specifically identify and address all peer review comments in the final rule.

In accordance with the Secretarial Order on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, NMFS will coordinate with Federally recognized American Indian Tribes on a Government-to-Government basis to determine how to make critical habitat assessments in areas that may impact Tribal trust resources.

NMFS will review all information received during the comment period as well as any new information identified after publishing the proposed designations. If changes are warranted, the agency will document the bases for the revisions and include this rationale as part of the administrative record for critical habitat designations.

Per current agency regulations at 50 CFR 424.18 and 424.19, NMFS anticipates that the final designations will be published in a **Federal Register** notice containing the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including input from public hearings and peer reviewers), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. The final rule will: summarize

factors affecting the species; identify physical and biological features essential to the conservation of the species that may require special management considerations or protection; describe any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation; identify the probable economic and other relevant impacts of the designation upon proposed or ongoing activities; identify the areas where the benefits of exclusion outweigh the benefits of including such areas as critical habitat; and describe the boundaries and include a map of critical habitat. To the maximum extent practicable, the final rule will also include a brief description and evaluation of those activities (whether public or private) that might occur in the designated areas and which, in the opinion of the Secretary, may adversely modify critical habitat or be affected by such designation.

New information and public and peer reviewer comments may result in final designations that differ from the proposals.

Information Solicited

Past critical habitat designations have generated considerable public interest. Therefore, NMFS believes it is important to engage the public early and often in the rulemaking process. This advance notice is a key first step, and NMFS encourages all interested parties to submit comments regarding the issues raised in this notice. NMFS is also soliciting biological and economic information relevant to making critical habitat designations for the following 20 ESUs: (1) Puget Sound chinook salmon; (2) Lower Columbia River chinook salmon; (3) Upper Willamette River chinook salmon; (4) Upper Columbia River spring-run chinook salmon; (5) Central Valley Spring-run chinook salmon; (6) California coastal chinook salmon; (7) Oregon Coast coho salmon; (8) Hood Canal summer-run chum salmon; (9) Columbia River chum salmon; (10) Ozette Lake sockeye salmon; (11) Southern California steelhead; (12) South-Central California coast steelhead; (13) Central California Coast steelhead; (14) Central Valley California steelhead; (15) Upper Columbia River steelhead; (16) Snake River Basin steelhead; (17) Lower Columbia River steelhead; (18) Upper Willamette River steelhead; (19) Middle Columbia River steelhead; and (20) Northern California steelhead (*see* Figure 1).

In accordance with agency regulations at 50 CFR 424.13, the agency will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties. Specific data needs include:

(1) Information (including fish surveys, dam counts, historical accounts, etc., as geographically specific as possible) on the past and current numbers and distribution of listed salmon and steelhead;

(2) Information describing the quality and extent of marine, estuarine, and freshwater habitats for all life stages of listed salmon and steelhead, separately describing habitat occupied at the time of listing; currently occupied habitat; and habitat that is currently accessible but not occupied by listed salmon and steelhead;

(3) Within areas occupied by salmon and steelhead in listed ESUs, NMFS seeks information regarding the physical and biological features that are essential to the conservation of the ESUs. Such essential features may include, but are not limited to: a) freshwater spawning sites with sufficient water quantity and quality and adequate substrate to support spawning, incubation and larval development; b) freshwater rearing sites with sufficient water quantity and floodplain connectivity to form and maintain physical habitat conditions and allow salmonid development and mobility; sufficient water quality to support growth and development; food and nutrient resources such as terrestrial and aquatic invertebrates, and forage fish; and natural cover such as shade, submerged and overhanging large wood, log jams, beaver dams, aquatic vegetation, large rocks and boulders, side channels and undercut banks; c) freshwater migration corridors free of obstruction and excessive predation, with adequate water quantity to allow for juvenile and adult mobility; cover, shelter and holding areas for juveniles and adults; and adequate water quality to allow for survival; d) estuarine areas that provide uncontaminated water and substrates; food and nutrient sources to support growth and development; and connected shallow water areas and wetlands to cover and shelter juveniles; e) marine areas with sufficient water quality to support salmonid growth, development, and mobility; food and nutrient resources such as marine invertebrates and forage fish; and nearshore marine habitats with adequate depth, cover, and marine vegetation to provide cover and shelter;

(4) Any special management considerations or protection currently associated with essential physical and biological features within areas occupied by the listed ESUs, such as a recorded easement or deed restriction, a state statute or comprehensive land use program; a federal regulatory limitation or a legally-binding federal land use plan; or a county ordinance or other binding local enactment;

(5) Whether there are any specific areas within the range of listed ESUs that should not be considered for critical habitat designation because they lack essential physical or biological features or may not require special management consideration or protections;

(6) Whether specific Indian lands should be considered essential for the conservation of the listed ESUs or whether conservation needs can be achieved by limiting the designations to other lands;

(7) Whether there are any specific areas outside the area occupied by listed ESUs that are essential for their conservation, and why;

(8) Whether there are any specific areas that should be excluded from critical habitat designation because the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(9) Any current or planned activities in the range of listed ESUs and their possible impacts on areas that may qualify as critical habitat;

(10) Any economic or other relevant impacts that may result from designating critical habitat, regardless of whether those impacts are attributable co-extensively to other causes, in particular those impacts affecting small entities;

(11) Other benefits of excluding or designating a specific area as critical habitat;

(12) Whether the approach to critical habitat designation for hatchery fish should be the same as for naturally spawned fish and if not, what approach should be used; and

(13) Potential peer reviewers for proposed critical habitat designations, including persons with biological and economic expertise relevant to the designations.

NMFS seeks the above information as soon as possible but by no later than November 13, 2003.

As described in a joint NMFS/FWS policy on ESA information standards

published on July 1, 1994 (59 FR 34271), NMFS will rely on the best and most comprehensive technical information available; gather and impartially evaluate information that disputes official positions; document evaluation of information; use, retain, and reference primary and original sources of information; and conduct management-level review of documents to verify and assure the quality of the science used to make the critical habitat designations. NMFS will review all comments and information resulting from this advanced notice of proposed rulemaking prior to making any proposed designations and will include such documents in the agency's public record. The public may review information submitted by contacting NMFS (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or via the internet at *http://www.nwr.noaa.gov*. The agency will continue to meet with comanagers and other stakeholders to review this information as well as the overall designation process prior to a proposed critical habitat designation.

References

The complete citations for the references used in this document can be obtained by contacting NMFS or via the Internet (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: September 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–24568 Filed 9–26–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 188

Monday, September 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–03–003]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations for Voluntary Grading of Poultry Products and Rabbit Products.

DATES: Comments on this notice must be received by November 28, 2003.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20050–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations for Voluntary Grading of Poultry Products and Rabbit Products—7 CFR Part 70.

OMB Number: 0581–0127.

Expiration Date of Approval: June 30, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

The regulations in 7 CFR part 70 provide a voluntary program for grading poultry and rabbit products on the basis of U.S. standards and grades. AMS also provides other types of voluntary services under the regulations, *e.g.,* contract and specification acceptance services and certifications of quantity. All of the voluntary grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee).

Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that the cost of service be assessed and collected, information is collected to establish the Agency's cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information. Information is also used by each authorized State agency which has a cooperative agreement with AMS.

AMS is committed to implementation of the Government Paperwork Elimination Act, which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: State or local governments, businesses or other for-profits, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 366.

Estimated Number of Responses: 22,464.

Estimated Number of Responses per Respondent: 61.

Estimated Total Annual Burden on Respondents: 1,753 hours.

Copies of this information collection can be obtained from Shields Jones, Standardization Branch, at (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to 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, to: David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250–0259.

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.

Dated: September 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–24537 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Development of Boat Ramp and Associated Structures at Caney Creek

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY:

Authority: The Forest Service is publishing this Notice of Intent pursuant to the Council on Environmental Quality implementing regulations of the National Environmental Policy Act at 40 CFR 1501.7.

DATES: Comments concerning the scope of this analysis should be received by October 31, 2003.

Send comments to: Submit written comments to James D. Manner, Daniel Boone National Forest, 2375 KY 801 South, Morehead, KY 40351 or via electronic mail at *comments-southern-daniel-boone-morehead@fs.fed.us*. Please include the title of the project in the subject line if commenting electronically.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lewis is the Interdisciplinary Team Leader for this proposed action. He can be reached by U.S. mail at the Morehead Ranger District, Daniel Boone National Forest, 2375 KY 801 South, Morehead, KY 40351; by phone at (606) 784–6428; or by e-mail at *jefflewis@fs.fed.us*.

Lead Agency: USDA Forest Service, Daniel Boone National Forest.

Cooperating Agency: None.

Responsible Official: The District Ranger for the Morehead Ranger District, Daniel Boone National Forest, located at 2375 KY 801 South, Morehead, KY 40351, is the responsible official for this proposed action.

Decision To Be Made: The responsible official will decide whether to approve the proposal, an alternative to the proposal, or no action. A determination will also be made whether the Forest Land and Resource Management Plan will need to be amended.

SUPPLEMENTARY INFORMATION: *Need for the Proposal:* The boat ramps located on the northern portion of Cave Run Lake experience overcrowding on most weekends over the course of the peak recreation season. This overcrowding causes user conflicts and delays in launching. Secondly, sail boaters comprise 5 percent of the users of the lake. Currently none of the existing ramps on the lake have facilities to accommodate the special needs of this group. Finally, a recreational development that included additional boat ramps, a lodge, and other facilities was proposed for private development when Cave Run Lake was constructed. This development has not been implemented since the lake was impounded. Private interests have cited the expense of providing adequate infrastructure to the area as the major barrier to the development of the site.

Purpose of the Proposal: The proposal addresses all three of the listed needs for the area by developing a boat ramp with facilities designed to better serve sail boaters and to reduce crowding at other ramps on the lake. The location of the ramp would be in the area proposed for development when the lake was constructed. Water, electric and sewer service would be designed and installed to accommodate potential future development.

Scoping Process: Project descriptions were mailed to approximately 70 individuals and groups on September 12, 2003. No public meetings are planned for this project.

Preliminary Issues: The following are preliminary environmental issues related to this proposal:

1. The development of the access road and boat ramp have the potential to alter the hydrology of several stream head wetland seeps in the area potentially causing the seeps to dry up.
2. The additional boat traffic allowed by the parking and launch access may result in overcrowding on the northern portions of the lake causing increased user conflict and reduced recreational satisfaction.
3. The construction of the boat ramp in a previously undeveloped cove of the lake has the potential to change the use patterns of the area potentially increasing user conflict and displacing existing users of the area.

Preliminary Alternatives: The following alternatives to the proposed project are being considered:

1. No development of a boat ramp, access road, and infrastructure.
2. Alteration of existing facilities to accommodate sail boaters and additional parking capacity with no development of infrastructure in the Caney Creek area.
3. Development of infrastructure in the Caney Creek area with no development of additional facilities.

Permits or Licenses Required: None.

Estimated Dates for DEIS and FEIS: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public review and comment by June 2004. At that time, the Environmental Protection Agency (EPA) will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register**. The comment period on the DEIS will be a minimum of 45 days from the date the EPA publishes the NOA in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environment review process. Firstly, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*). Also, environmental objections that could be raised at the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the scoping comment period, so that substantive comments are made available to the Forest Service at a time when the comments can be meaningfully considered and responded to in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled for completion in August 2004. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action.

The responsible official will document the decision and reasons for the decision in a Record of Decision.

That decision will be subject to appeal in accordance with 36 CFR part 215.

James D. Manner,

District Ranger, Morehead Ranger District, Daniel Boone National Forest.

[FR Doc. 03–24505 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Council Advisory Committee for Madera County will meet on Monday, October 20, 2003. The Madera Resource Advisory Committee will meet at the Yosemite Bank, Oakhurst, CA. The purpose of the meeting is: review new RAC proposals, review progress of FY 2002 accounting, review new Forest Service Region 5 RAC website, review Madera County RAC Mission Sub-committee Report, clarify voting procedures, and, reconsideration of vote to use RAC funds to attend Regional RAC Meeting November 13, 2003.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, October 20, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Yosemite Bank, 40061 Highway 40, Oakhurst, CA 93644.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review new RAC proposals, (2) review progress of FY 2002 accounting, (3) review new Forest Service Region 5 RAC website, (4) review Madera County RAC Mission Sub-committee Report, (5) clarify voting procedures, and, (6) reconsideration of vote to use RAC funds to attend Regional RAC Meeting November 13, 2003. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 22, 2003.

Michael A. Lefevre,

Acting District Ranger.

[FR Doc. 03–24483 Filed 9–26–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–813]

Stainless Steel Butt-Weld Pipe Fittings From Korea; Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review for the Period February 1, 2002 through January 31, 2003.

SUMMARY: On March 25, 2003, in response to a request made by Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, petitioners), the Department of Commerce (the Department) published a notice of initiation of antidumping duty administrative review of stainless steel butt-weld pipe fittings from Korea for the period February 1, 2002 through January 31, 2003. The review covers three manufacturers/exporters of subject merchandise, Sam Sung Stainless Commerce & Ind. Co., Ltd. (Sam Sung), Sungkwang Bend Co., Ltd. (Sungkwang), and TK Corporation. On May 28, 2003, petitioners withdrew their request for review of Sungkwang and TK Corporation. Because the petitioners submitted the only request for review of these two respondents, and also requested the rescission within the 90-day time limit, the Department is rescinding the review with respect to these respondents in accordance with 19 CFR 351.213(d)(1). Sam Sung failed to respond to the Department's questionnaire. As a result, we are basing our preliminary results for Sam Sung on adverse facts available.

EFFECTIVE DATE: September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1993, the Department published the antidumping duty order on certain stainless steel butt-weld pipe fittings from Korea. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea*, 58 FR 11029 (February 23, 1993). On February 3, 2003, the Department published a notice of opportunity to request administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 68 FR 5272 (February 3, 2003). On February 28, 2003, petitioners requested that the Department conduct an administrative review of TK Corporation, Sungkwang, and Sam Sung for the period February 1, 2002 through January 31, 2003. There were no other requests for review. On March 25, 2003, the Department published a notice of initiation of antidumping duty administrative review of stainless steel butt-weld pipe fittings from Korea, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (March 25, 2003). On March 25, 2003 we issued the questionnaires to TK Corporation, Sungkwang, and Sam Sung. We received responses from TK Corporation and Sungkwang, but no response from Sam Sung. On May 28, 2003, petitioners withdrew their request for review of TK Corporation and Sungkwang. On August 14, 2003 we sent a letter to Sam Sung allowing it until August 25, 2003 to respond to the questionnaire. We again received no response from Sam Sung.

Rescission of Review

Pursuant to its regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). The petitioners' withdrawal of their request for review of TK Corporation and Sungkwang was within the 90-day time limit; accordingly, we are rescinding the administrative review for the period February 1, 2002 through March 31, 2003 with respect to these two companies, and will issue appropriate assessment instructions to the U.S.

Bureau of Customs and Border Protection (Customs).

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act) provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

On March 25, 2003, the Department issued its standard antidumping questionnaire to Sam Sung. The Department received no response. On August 14, 2003 the Department issued a letter to Sam Sung extending the deadline for its response until August 25, 2003. Sam Sung again did not respond. The information in this questionnaire related to Sam Sung's pricing practices in its home and U.S. markets. Without this information the Department is unable to determine what level of dumping, if any, existed for Sam Sung during the period of review. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) of the Tariff Act because Sam Sung withheld information requested by the Department.

Section 776(b) of the Tariff Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. 316–103d at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Final Rule*).

The Department finds that in not responding to the questionnaire, Sam Sung failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Tariff Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. *See e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). (''Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding.... In this case, the highest margin from any segment of the proceeding is... the petition rate in the less-than-fair-value (LTFV) investigation.'') Therefore, in the instant case, the Department is applying the margin of 21.2 percent to Sam Sung for these final results. This margin represents the highest margin calculated in the AD petition submitted in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881, 61882 (December 29, 1992).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* H.R. Doc. 316–103d at 870 (1994). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

To corroborate the margins calculated in the petition, we examined the basis of the rates contained in the petition. The U.S. prices in the petition were based on prices of a Korean manufacturer selling in the United States. *See Petition* at 24 and appendix M (May 20, 1992). To corroborate this information, we obtained U.S. import statistics from the U.S. International Trade Commission (the ITC). *See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa*, 61 FR 24271, 24273 (May 14, 1996). However, the ITC reported this data on a weight basis, and the prices contained in the petition were reported on a per-piece basis. Therefore, we were unable to use the U.S. import statistics as corroboration. Nevertheless, the prices used in the petition were from a price list that was publicly available and obtained directly from the Korean seller and manufacturer. *See Petition*, at appendix M (public version) (May 20, 1992). Therefore, because it is an independent, public source, we find that it has probative value. *See Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Antidumping Duty Administrative Review*; 68 FR 6409, 6411 (February 7, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 41347, 41349 (August 1, 1997). The Department is aware of no other independent sources of information that would enable us to further corroborate the petition's margin calculation.

The normal value was based on constructed value (CV). Petitioners based the cost of raw materials on petitioners' own consumption at prices reported in an antidumping petition for certain welded stainless steel pipes from Korea filed with the Department on November 18, 1991. Petitioners based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Korea. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing were based on petitioners' own actual experience in 1991. Petitioners added the statutory minimums of ten percent for general expenses and eight percent for profit to the cost of manufacturing. We examined the data submitted by the petitioners and the assumptions the petitioners made when calculating CV. The methodology was reasonable and was based on the data reasonably available to petitioners at the time. For purposes of the preliminary results of this review, we find no reason to believe the reliability of this information should be called into question.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether there are circumstances that

would render a margin inappropriate. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). *See Stainless Steel Plate in Coils from Belgium; Preliminary Results of Antidumping Duty Administrative Review*; 66 FR 11559 (February 26, 2001).

The highest margin in the history of the proceeding is 21.2 percent from the petition in the LTFV investigation. In this review, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find the 21.2 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Tariff Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 21.2 percent exists for Sam Sung for the period February 1, 2002 through January 31, 2003.

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication. *See* 19 CFR §351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. *See* 19 CFR §351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, not to exceed five pages in length. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR §351.310(c). Any hearing, if requested, will be held two days after the submission of rebuttal briefs, if any, or the first working day thereafter. *See* 19 CFR §351.310(d). The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results. *See* 19 CFR §351.213(h).

The Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

Cash Deposit

The following deposit requirements will be effective upon publication of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 21.2 percent, the ''all others'' rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881, 61882 (December 29, 1992).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary 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 double antidumping duties.This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 16, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–24576 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Travel and Tourism Promotion Advisory Board; Notice of Open Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

Date: October 13, 2003.

Time: 1:30–4:30 p.m.

Place: Washington Convention Center, 801 Mount Vernon Place, NW., Washington, DC 20001.

SUMMARY: The United States Travel and Tourism Promotion Advisory Board (''Board'') will hold a Board meeting on October 13, 2003 at the Washington Convention Center.

The Board will discuss the design, development and subsequent implementation of an international advertising and promotional campaign, which will seek to encourage individuals from select countries to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer at least 24 hours before the start of the meeting. She may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7025, Washington, DC 20230; via fax at (202) 482–4272; or, via e-mail at *promotion@tinet.ita.doc.gov.*

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 30 days of this meeting.

The Board is mandated by Pub. L. 108–7, Section 210. As directed by Public Law 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with

contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

The Washington Convention Center is accessible by Metro via the Yellow Line. The Yellow Line exit for the Washington Convention Center is Mt. Vernon Square/ Convention Center.

For further information, phone Julie Heizer, Office of Travel and Tourism Industries (OTTI), International Trade Administration, U.S. Department of Commerce at (202) 482–4904. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: September 22, 2003.

Cary G. Justice,

Special Assistant, Office of Service Industries, Tourism, and Finance.

[FR Doc. 03–24577 Filed 9–26–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092303C]

Notice of Change to Regional Fisheries Management Meetings

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

ACTION: Notice of change of public meeting.

SUMMARY: Due to concern regarding the path of Hurricane Isabel, NMFS cancelled the September 18, 2003, South Atlantic constituent session in Pawleys Island, S.C. The rescheduled constituent session will be in Charleston, S.C. on October 7, 2003. This is part of a series of regional constituent sessions that started in June and are running through October to gather public input on ways to improve the effectiveness of NMFS and its management of living marine resources. The regional sessions are a collaborative effort involving all major marine fisheries interests. The primary objective is to assemble and provide a comprehensive analysis of the diverse opinions, attitudes, and perspectives of marine resource stakeholders as they relate to broad themes in fisheries management. The secondary objective is to identify performance measures.

DATES: The South Atlantic constituent session will be held October 7, 2003, from 5 p.m. – 6 p.m. and 6:30 p.m. – 8 p.m. To submit comments, see **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The session will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407. Telephone: 843–571–1000. Information on the meetings will be updated periodically on NMFS' web page: *http://www.nmfs.noaa.gov/emeetings*.

FOR FURTHER INFORMATION CONTACT: Gordon Helm, NMFS, telephone: 301–713–2370; email: *gordon.helm@noaa.gov*. To submit e-Comments (see E-Comments Pilot Program).

SUPPLEMENTARY INFORMATION: On May 15, 2003 (68 FR 26291), NMFS published in the **Federal Register** notice of regional constituent sessions. The session previously scheduled for September 18, 2003, in Pawleys Island, S.C. is now scheduled for October 7, 2003, in Charleston, S.C. The schedule for the other constituent sessions remains unchanged.

E-comments Pilot Program

NMFS encourages the public to participate in submitting comments by the e-comment program. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project. The e-Comments pilot project is designed to introduce electronic commenting to its constituents. You can respond to the questions on the e-comment page through NMFS' web page *http://www.nmfs.noaa.gov/emeetings*. The public is encouraged to use the new web site to compose and submit comments on the regional constituent meetings. In submitting comments, please include your name, address, and region for each comment. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site *http://www.nmfs.noaa.gov/emeetings*.

Areas NMFS is soliciting public comments on:

(1) What is the most important issue facing fisheries in your region?

(2) Who has responsibility over this issue? If unclear, or uncertain, who should be in charge?

(3) Identify and describe a possible solution or solutions that would remedy the issue?

(4) Does the solution require (a)no changes to the present administrative or statutory structure, or (b)administrative changes, and if so, what changes would you propose, or (c) statutory changes, and if so, what would they be?

(5) How could one measure whether the solution is being properly implemented and working?

(6) Briefly describe the best way to keep you informed about changes within NMFS and fisheries management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gordon Helm (see **FOR FURTHER INFORMATION CONTACT**) 2 weeks before each meeting.

Dated: September 23, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–24566 Filed 9–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection, Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with Section 3506(c) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received November 28, 2003.

ADDRESSES: Written comments and recommendations on the proposed

information collection should be sent to TRICARE Management Activity—Aurora, Appeals, Hearings and Claims Collection Division, 16401 E. Centretch Pkwy., Attn: Donald F. Wagner, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Appeals, Hearings and Claims Collection Division at (303) 676–3411.

Title, Associated Form, and OMB Number: Professional Qualifications Medical/Peer Reviewers, CHAMPUS Form 780, OMB Number 0720–0005.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within CHAMPUS. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Business or other for-profit.

Annual Burden Hours: 15.

Annual Number of Respondents: 60.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide medical and peer review of cases appealed to the Office of Appeals, Hearings and Claims Collection Division, TRICARE Management Activity. CHAMPUS Form 780 records the professional qualifications of the medical/peer reviewer. The completed form is included as an exhibit in the appeal or hearing case file, and documents for anyone reviewing the file, the professional qualifications of the medical professional who review the case. If the form is not included in the case file, individuals reviewing the file will not have ready access to the qualifications of the reviewing medical professional. Having qualified professionals provide medical and peer review is essential in maintaining the integrity of the appeal and hearing process.

Dated: September 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–24439 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

In reply refer to:
I-03/010291

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-36, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to United Kingdom for defense articles and services estimated to cost $143 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** United Kingdom

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 88 million
Other	$ 55 million
TOTAL	$143 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 105 conventionally armed TOMAHAWK BLOCK IV Land Attack Missiles (TLAM-E), containers, engineering support, test equipment, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support.

(iv) **Military Department:** Navy (AHJ)

(v) **Prior Related Cases, if any:**
FMS case AHE - $39 million - 14Dec01
FMS case GXQ - $71 million - 13Nov00
FMS case AHA - $32 million - 26Aug99
FMS case AGS - $140 million - 16Oct95

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 11 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - TOMAHAWK BLOCK IV Land Attack Missiles

The Government of United Kingdom has requested a possible sale of 105 conventionally armed TOMAHAWK BLOCK IV Land Attack Missiles (TLAM-E), containers, engineering support, test equipment, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $143 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of the United Kingdom and enhancing weapon system standardization and interoperability of this important NATO ally.

The United Kingdom needs these missiles to replenish missiles expended in support of coalition operations. The proposed sale will enhance the United Kingdom's ability to engage in coalition warfare along with the U.S. Navy. The United Kingdom, which already has TOMAHAWK missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The conventionally armed TOMAHAWK BLOCK IV Land Attack Missile (TLAM-E) consists of the following classified components:

a. The TLAM-E missile (Complete) – Missile components consisting of Guidance Set, Digital Scene Matching Area Correlator (DSMAC), Global Positioning System (GPS) when software is installed, Data Link when software/firmware is installed, Common Missile Radar Altimeter (CMRA), Operational Flight Software, DSMAC Flight Software, and GPS flight software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that United Kingdom can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–24437 Filed 9–26–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE (Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); Fiscal Year 2004 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volumes providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2004 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2004.

EFFECTIVE DATE: The fiscal year 2004 rates contained in this notice are effective for services occurring on or after October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admission in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2004, Medicare has recommended a rate of increase of 3.4 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2004 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2003 updates by 3.4 percent for FY 2004. Partial hospitalization rates for full day and half day programs will also be updated by 3.4 percent for FY 2004. The cap amount for high volume hospitals and units will also be updated by the 3.4 percent for FY 2004. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.4 percent for FY 2004. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment is 71.56 percent for FY 2004.

The following reflect an update of 3.4 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States census region	Rate*
Northeast:	
New England	$618
Mid-Atlantic	594
Midwest:	
East North Central	513
West North Central	484
South:	
South Atlantic	612
East South Central	663
West South Central	558
West:	
Mountain	557
Pacific	657

*Wage portion of the rate, subject to the area wage adjustment: 71.56 percent

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $164 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2003

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $776 per day for FY 2004.

The following reflect an update of 3.4 percent for FY 2004.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2004

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$248	$186
Mid-Atlantic (NY, NJ, PA)	268	201
Midwest:		
East North Central (OH, IN, IL, MI, WI)	236	177
West North Central (MN, IA, MO, ND, SD, NE, KS)	236	177
South:		
South Atlantic (DE, MD, DC, VA, NY, NC, SC, GA, FL)	255	191

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2004—Continued

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
East South Central (KY, TN, AL, MS)	275	206
West South Central (AR, LA, TX, OK)	275	206
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	278	209
Pacific (WA, OR, CA, AK, HI)	272	204

The above rates are effective for services rendered on or after December 1, 2003.

Dated: September 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–24441 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting cancellations.

SUMMARY: The Defense Science Board Task Force on Enabling Joint Force Capabilities meeting scheduled for September 22, 2003, was canceled due to Hurricane Isabel. The follow-on meeting on September 29, 2003, has also been canceled.

Dated: September 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–24442 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

United States European Command Senior Advisory Group

AGENCY: United States European Command, DoD

ACTION: Notice of closed meeting.

SUMMARY: The United States European Command Senior Advisory Group (USEUCOM SAG) will meet in closed session on October 6 and 7, 2003 at the National Defense University in Washington, DC. The two-day meeting will be discussing issues regarding the European Theater Transformation Campaign Plan and such material cannot be segregated without defeating the purpose of the meeting. Access to the information will be limited to personnel with the specific clearances and need-to-know.

This meeting will include classified matters within the meaning of the Federal Advisory Committee Act in accordance with 5 U.S.C., App 2, Section 10(d), 5 U.S.C., Section 552b(c), and Executive Order 12958 dated April 17, 1995.

DATES: October 6 and 7, 2003.

ADDRESSES: National Defense University, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mahar, (703) 614–6465.

Dated: September 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–24438 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Deputy Secretary of Defense Policy Memorandum, Subject: Ensuring the Quality of Information Disseminated to the Public by the Department of Defense, Dated February 10, 2003

AGENCY: Assistant Secretary of Defense for Public Affairs, DoD.

ACTION: Notice of availability.

SUMMARY: This notice is being published to notify interested persons of a new Web site address. The Department of Defense Memorandum, previously available at a different address, providing final guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public are available on Web site: *http://www.defenselink.mil/pubs/*. The Department of Defense published an earlier notice of availability for these guidelines on March 26, 2003 (68 FR 14599).

DATES: February 10, 2003.

ADDRESSES: Ms. Janet Unger, OASD (PA), Office of the Assistant Secretary of

Defense for Public Affairs, 1400 Defense Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Unger, OASD (PA), 703–428–0593, *junger@hq.afis.osd.mil.*

Dated: September 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–24440 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is amending one system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on October 29, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 17, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA I

SYSTEM NAME:

Commander Directed Inquiries (June 4, 2002, 67 FR 38487).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy 2 years after the case is closed.'

* * * * *

F051 AF JA I

SYSTEM NAME:

Commander Directed Inquiries.

SYSTEM LOCATION:

Commander Directed Inquiries are maintained at the installation where the Commander's office is located.

Information copies of a report are kept at the individual's organization and at other organizations which have an interest in a particular incident or problem involving that individual that is addressed in the report. Official Air Force mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who are subjects of reviews, inquiries, or investigations conducted under the inherent authority of a commander or director. All persons who are subjects of administrative command actions for which another system of records is not applicable.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commander-directed investigations; letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs, record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance, personnel; administration; adverse information, and technical reports; documentation of command action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 164, Commanders of Combatant Commands; Air Force Instruction 51–604, Appointment to and Assumption of Command; Inherent authority of commanders to investigate matters or incidents under their jurisdiction or command.

PURPOSE(S):

Used to ensure just, thorough, and timely resolution and response to complaints, allegations, or queries, and as a means of improving morale, welfare, good order, discipline, and efficiency of organizations, units, and personnel.

Portions of the inquiries or investigations may be used in evaluating an individual's overall performance and may be included in their military personnel records.

Documents received or prepared in anticipation of litigation are used by attorneys for the government to prepare for trials and hearings; to analyze evidence; to prepare for examination of witnesses; to prepare for argument before courts, magistrates, and investigating officers; and to advise commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To governmental boards or agencies or health care professional societies or organizations if such record or document is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed non-credentialed health care personnel who are or were members of the United States Air Force, and to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To certifying and licensing bodies for professional certifications and accreditations not related to health care.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers, and on computer output and storage products.

RETRIEVABILITY:

Retrieved by subject's name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record

system in performance of their official duties and by authorized personnel who are properly screened and cleared based upon a need to know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Destroy 2 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

The Commander who initiated an investigation or that Commander's successor in command, at that Commander's installation office. Official Air Force mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander who initiated the investigation, or that Commander's successor, at the Commander's installation office.

Individual should provide their full name, mailing address, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address request to the Commander who initiated the investigation, or that Commander's successor in command, at the Commander's installation office.

Individual should provide their full name, mailing address, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, subjects, investigations, witnesses, official records, third parties, and Members of Congress. Information from almost any source can be included if it is relevant and material to the investigation, inquiry, or subsequent command action.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–24443 Filed 9–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) for the Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Striker Brigade Combat Team (SBCT) in Hawaii

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Proposed Action includes training to be conducted at Schofield Barracks Military Reservation (SBMR), Dillingham Military Reservation, Kahuku Training Area and Kaiwaloa Training Area on Oahu and the Pōhakuloa Training Area on the island of Hawaii. Twenty-eight projects are proposed that would improve the existing support structure and facilities to provide the necessary field training required for an SBCT. These projects include construction of ranges, airfield upgrades, land acquisition, and new equipment such as new and modernized vehicles (namely the Stryker, an eight-wheeled, 20-ton combat vehicle) and weapons systems (105mm cannon and 120mm mortar). The number of soldiers and vehicles stationed at SBMR also would increase. The Army would acquire land on Oahu (approximately 1,400 acres) and on the island of Hawaii (approximately 23,000 acres) for training areas and road construction.

DATES: The comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the DEIS, ask questions or submit written comments, contact Ms. Cindy Barger, U.S. Army Corps of Engineers, Honolulu Engineer District, Program and Project Management, Attention: CEPOH–PP–E (Barger), Building 230, Fort Shafter, Hawaii 96858–5440.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Barger by telephone at (808) 438–4812; by facsimile at (808) 438–7801; or by e-mail at *SBCT_EIS@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The SBCT DEIS analyzes three alternative courses of action with respect to the transformation of the 2nd Brigade, 25th Infantry Division in Hawaii: (1) The transformation of the 2nd Brigade, 25th Infantry Division (Light) to an SBCT with a range of supporting activities including new, additional, or modified ranges, facilities and infrastructure and acquisition of approximately 1,400 acres of additional training lands on Oahu and 23,000 acres on the island of Hawaii (preferred alternative); (2) the transformation of the 2nd Brigade, 25th Infantry Division (Light) to an SBCT with a range of supporting activities including new, additional, or modified ranges, facilities and infrastructure, and acquisition of approximately 100 acres of additional training lands on Oahu and 23,000 acres on the island of Hawaii; and (3) the no action alternative, under which no transformation would occur in the near term and training would continue as currently exists.

Comments on the Draft EIS, received during the 45-day public comment period, will be considered in preparing the Final EIS. Public meetings to comment on the SBCT DEIS will be held at various locations on the islands of Oahu and Hawaii. Notification of the times and locations for the public meetings will be published in local newspapers and in the Hawaii Office of Environmental Quality Control bulletin.

Copies of the SBCT DEIS are available for review at the following libraries: Hilo Public Library, 300 Waianuenue Avenue, Hilo, Hawaii 96720–2477; Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona, Hawaii 96740–1704; Thelma Parker Memorial Public and School Library, 96767–1209 Mamalahoa Hwy. Kamuela, Hawaii 96743–8429; Kahuku Public and School Library, 56–490 Kamehameha Hwy., Kahuku, Hawaii 96731–2200; Mililani Public Library, 95–450 Makaimoimo Street, Mililani, Hawaii 96789–3018; Hawaii State Library, 478 South King St., Honolulu, Hawaii 96813–2901; Wahiawa Public Library, 820 California Avenue, Wahiawa, Hawaii 96786–2034;

Waianae Public Library, 85–625 Farrington Hwy., Waianae, Hawaii 96792–2406; Waialua Public Library, 67–068 Kealohanui Street, Waialua, Hawaii 96791; and UH Environmental Center, 317 Crawford Hall, 2550 Campus Rd., Honolulu, Hawaii 96822–2217.

The Draft EIS may also be reviewed at the following SBCT Web site: *http://www.SBCTEIS.com.*

Dated: September 22, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 03–24482 Filed 9–26–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Mandatory Use of US Bank's PowerTrack System by Department of Defense Personal Property Transportation Service Providers

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for the Household Goods and Personal Property Program, proposes the mandatory use of U.S. Bank's PowerTrack System as the transaction and payment system for all DOD Transportation Service Providers (TSP), beginning with the implementation of Phase I of the Defense Future Personal Property Program, (Families First). Furthermore, the use of MTMC's Centralized Web Application (CWA) will also be mandatory. Implementation of PowerTrack at all Military Services and Coast Guard installations is the goal of Families First, which is the first step in moving toward the reengineered Personal Property Program of the future.

This announcement is being made to provide responses to comments received from the **Federal Register** notice published on June 5, 2003 (68 FR 33683) proposing mandatory use of U.S. Bank's Power TrackSystem by Department of Defense Personal Property Transportation Service Providers. The Electronic Billing and Payment portion of the Families First Web Site is located at *http://www.mtmc.army.mil,* under the Personal Property Program. The site offers industry access to updates on the Business Rules, Concept of Operations (CONOPS), and System Interface Specifications. The initial rollout of PowerTrack and CWA is proposed to begin October 2003.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP–PD, Room 10N35–58 (George Thomas), Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Mr. George Thomas at (703) 428–2237.

SUPPLEMENTARY INFORMATION: In response to the notice published June 5, 2003 we have received three sets of comments, one from an attorney representing a carrier association, one from a senior official representing a carrier association and one from a senior official representing an independent transportation Service Provider, within the 30-day comment period. A synopsis of these comments and responses appear below.

Comment: Application of Prompt Payment Act (PPA) needs to be addressed and clearly defined before implementing PowerTrack.

Response: As indicated in a 15 May 2003 letter from Defense Finance Accounting Services (DFAS) to the three major Industry associations, it is DFAS policy that PPA interest should be paid when a proper invoice, as defined in 5 CFR part 1315, is not paid within 30 days from receipt by the designated billing agency office. The third party billing agent will be the designated billing agency in the reengineered process. If there is a dispute over information on the invoice, to include price, quantity and/or compliance, the carrier will be notified within seven days of invoice receipt. This notification effectively stops the clock for computing PPA interest. Payment will be made within 30 days of receipt of corrected invoice to avoid payment of PPA interest. MTMC is working with DFAS and U.S. Bank to develop business rules which will outline and define the prompt payment process in Phase I.

Comment: Industry raised concerns about the proposed timeframe of Phase I implementation. Specifically, they do not believe October 2003 is a realistic date and believe the date should be moved to early 2003. According to Industry, adequate time was not given them to make computer-programming changes.

Response: According to plans, we are moving forward to implement PowerTrack in the current Personal Property Program in October 2003. Industry has been participating for the past year as members of the Electronic Billing/Payment Team. It has been communicated from the start what our plans were and on one occasion, we slipped the start date from July 03 to the current target date of October 2003. The initial rollout will be from limited shipping sites with only certain carriers participating.

Comment: Industry does not see the benefit of implementing PowerTrack using the current Military Rate Tariff (MRT) and suggest using the 400N Commercial Tariff during the Phase I Evaluation Period.

Response: Currently, we have a Rates Solicitation Team as part of the Families First program who are receiving the 400N Commercial Tariff. It is the intent of MTMC to negotiate with industry to use a modified version of the 400N Commercial Tariff in the Defense Future Personal Property Program as part of the overall Families First. However in the interim, our goal is to implement PowerTrack as part of the Phase I Evaluation Period using the current MRT. In the interest of time, we do not believe it is feasible to incorporate the 400N in Phase I since we have not completed our analysis of it. Instead, it will be part of our Phase II rollout plan.

Comment: Industry has raised concerns regarding the PPSO workload during Phase 1. Primarily, the PPSO's ability to perform additional workload during a time of downsizing, difficulty in completing their job timely in the current environment, and adequate training and assurance that sufficient resources will be provided TOs to ensure prompt payment.

Response: Presently, we are working with the Military Services to determine if there are additional workload requirements associated with implementing Phase I in the current program. The Services were asked to provide any data they may have to support their concerns. Our recommendation is to move forward with the Phase I Evaluation Period in order to establish the validity of these perceived workload concerns.

Comment: Industry wants to know what type of compensation will be given to those Transportation Providers who volunteer to participate in the Phase I Evaluation Period and how will they be compensated for added cost.

Response: All Transportation Providers participating as volunteers during the Phase I Evaluation Period will receive compensation. This will come in the form of a percentage adjustment similar in kind to the fuel surcharge. Participating TPs will apply the percentage adjustment on a shipment by shipment basis.

Comment: Industry believes that GSA request for hard copy documentation is a duplication of effort and TPs required to submit duplicates should be

compensated. They feel this is inconsistent with the Paperwork Reduction Act.

Response: MTMC's goal is to eliminate hard copy documentation that TPs are required to submit for processing invoices. We are working with the Services and GSA to come up with a solution that is amendable to all parties involved. To that end, we are moving forward to begin automation of the hard copy documentation in Phase I.

Comment: Industry believes the concept of pre-authorizing accessorial is a bad idea and wants to know if local agents will have access to CWA. They want to reserve the right to comment on CWA until more is known.

Response: The idea of pre-authorizing accessorials in CWA is to streamline the pre-approval process and make it more manageable and efficient for PPSOs and Transportation Providers. The current process of notes and sticky papers is cumbersome, tedious and unorganized. Due to the limited scope and functionality of CWA, local agents will have not have access to CWA during the Phase I process. However, they will have access during Phase II and implementation of DPS. We held several demonstrations of CWA and PowerTrack for Industry to preview. We will continue this process as we move forward with Phase II.

Comment: PowerTrack is an electronic billing and payment system that was designed for general freight shipments, not personal property shipments. The key difference between the two is the number of line items on an invoice, as personal property shipments have numerous accessorial charges that all need to match up accurately under PowerTrack's ''matching'' model. It is not an oversimplification to observe that it is much easier to ''match'' an invoice when only a handful of data points need to match than when there are hundreds of line items that must match.

Response: The process designed for the Families First program recognizes the differences between freight shipments and personal property shipments. For personal property shipments, the TP invoice will first be processed by PowerTrack to add a unique line item identifier code which will then be provided to CWA and returned with the corresponding line item of the BOL/GBL. The line item identifier code will allow for accurate matching of line items. Changes have been made to incorporate personal property business processes.

Comment: There have also been some reports that PowerTrack may offer carriers a reduced fee if they meet certain data transmission requirements. If this is true, the requirements for the discount need to be released publicly so all carriers can make plans to comply. The requirements also need to be reviewed to ensure that they do not discriminate against small businesses, which may not have access to the same equipment as larger companies.

Response: U.S. Bank makes available to Sellers two pricing options as fully described in the PowerTrack Seller Agreement. Preferred Pricing provides lower processing fees and requires the Seller to meet certain qualifications. Namely, transaction data must be provided to U.S. Bank either through the PowerTrack Web site or through an EDI—formatted electronic transmission over the Internet complying with PowerTrack's data format and protocol standards. The two methods allow any seller, regardless of size or technical capabilities, to qualify for the preferred pricing. In addition to providing transaction data to PowerTrack through one of the two methods, the seller must also agree to process payment requests within the PowerTrack System for any PowerTrack-capable buyer as requested by such buyer. For sellers who do not comply with the terms and conditions of Preferred Pricing, U.S. Bank makes Basic Pricing options available.

Comment: PowerTrack states that they will only hold payment data online for 13 to 16 months. The Statute of Limitations allows both the TP and the DoD/GSA the right to bill or deduct up to three years after a transaction; keeping data online for only 13–16 months invites more problems. PowerTrack should hold data online for the three years required.

Response: PowerTrack provides all customers, Buyers and Sellers, with 16 months of online transaction access. Each PowerTrack customer must decide what they want PowerTrack to do with the data after this point. Each PowerTrack customer has the option of paying PowerTrack to provide the long-term archival storage or receiving an archival extract and taking responsibility for their own archival storage and retrieval. PowerTrack's standard Archival Extract Files have been designed to provide each customer with 100% of the data PowerTrack has captured on their behalf for every type of document managed by PowerTrack in which the customer participates as either a Buyer or a Seller.

Comment: There is to be a new user interface from PowerTrack, their interface number 3.0, that is not yet been shown to TPs. It is stated to be ready in September, far too late for enough time for all 'Volunteer' TPs staff to be trained properly before the proposed start date.

Response: PowerTrack's Release 3.0 has been in production since January 2002. Enhancements and additional capabilities are being developed to support Personal Property shipments but much of the existing functionality, available today, will be utilized. PowerTrack along with MTMC are working to provide training to all TPs prior to them processing payments in the Families First Program. Training will include a Families First program overview, along with CWA and PowerTrack training. Training will be conducted prior to implementation.

Comment: We believe that there is a serious deficiency when PowerTrack only allows the Origin PPSO access to the shipment information. If there is a problem that can only be resolved in PowerTrack involving Destination PPSO charges, then the Destination PPSO must contact the Origin PPSO and ask them to work with the TP

Response: Functionality within PowerTrack and CWA has been designed to support the Origin PPSO role. Under the current Phase I process, audit exceptions will primarily be managed through CWA where both Origin and Destination PPSO's have access. This will minimize the number of problems that can only be resolved in PowerTrack involving Destination PPSO charges. However, MTMC and PowerTrack understands the concern regarding this design and is exploring new capabilities and the technical feasibility to allow Destination PPSO access to PowerTrack.

Regulatory Flexibility Act

This action is not considered rule making within the meaning the Regulatory Flexibility Act, 5 USC 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 USC 3051 et seq., does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Thomas Hicks,

Chief, Personal Property Division.

[FR Doc. 03–24612 Filed 9–26–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement Titled: Amite River and Tributaries, Bayou Manchac, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District, is initiating this study as a continuation of the Amite River and Tributaries Initial Evaluation Study, dated November 1984. The Amite River and Tributaries Study was initiated in response to a resolution, dated April 14, 1967, of the committee on Public Works of the United States Senate. This resolution directed the Board of Engineers, created under Section 3 of the River and Harbors Act, dated June 13, 1902, to determine whether the existing project should be modified for additional improvements for flood control and related purposes on the Amite River, Bayou Manchac, and Comite River and their tributaries.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Ms. Elizabeth McCasland at U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, by E-mail at *elizabeth.l.mccasland@mvn02.usace.army.mil*, phone (504) 862–2021, or fax number (504) 862–2572.

SUPPLEMENTARY INFORMATION: An early screening phase concluded that there were not enough structural damages to support a single-purpose flood damage reduction study. However, it was determined that opportunities exist for ecosystem restoration that could possibly lower storm water stages as an ancillary benefit. This project will be evaluated under the National Ecosystem Restoration (NER) and National Economic Development (NED) planning and procedures guidelines.

1. *Proposed Action.* The proposed action would include one or more of the alternatives that when combined would improve the ecosystem and possibly reduce flood stages. Economic and environmental analysis would be used to determine the most practical plan, which would provide for the greatest overall public benefit.

2. *Alternatives.* Alternatives recommended for consideration presently include: A higher capacity structure at the confluence of Alligator Bayou and Bayou Manchac, a connection to New River, a freshwater input from Willow Glen Power Plant, a replacement of Frog Bayou Structure, Habitat Restoration, a pump and conveyance at Elbow Bayou with a flow restriction on Bayou Fountain, an operational water management plan and Non-Structural flood reduction measures.

3. *Scoping.* Scoping is the process for determining the scope of alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in the fall of 2003. The meeting will be held in the vicinity of Baton Rouge, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. *Significant Issues.* The tentative list of resources and issues to be evaluated in the EIS includes wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. *Estimated Date of Availability.* Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available is the summer of 2006.

Dated: September 15, 2003.

Peter J. Rowan,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–24615 Filed 9–26–03; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Development by Cooper Land Development, Inc. in Baldwin County, AL

AGENCY: Department of the Army, Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District (Corps) intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the Cooper Land Development project located near Stockton in Baldwin County, Alabama. The Corps will be evaluating a permit application for the work under the authority of Section 404 of the Clean Water Act. The environmental impact statement will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

DATES: A scoping meeting will be held on October 28, 2003, at the Bay Minette Civic Center, 301 D'Olive Street, Bay Minette, Alabama 36507 beginning at 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Dr. Diane Findley (*diane.i.findley@sam.usace.army.mil*), phone 251–694–3857 or Munther Sahawneh (*munther.n.sahawneh@sam.usace.army.mil*), phone 251–694–3782. Mailing address for Dr. Findley and Mr. Sahawneh is U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

SUPPLEMENTARY INFORMATION: 1. The permit applicant (Department of Army permit application number AL03–00285–H) is proposing a residential

development that will result in filling/impacting approximately 349.3 acres of wetlands and approximately 7.05 linear miles of streams. The project site contains approximately 845 acres of jurisdictional wetlands and 14.53 miles of streambeds. This residential development project is comprised of approximately 5,024 acres and is located near the Stockton Community in Baldwin County. The proposed project will consist of the construction of six lakes, three 18-hole golf courses, roadways, and approximately 9,000 low to medium density single-family residential home sites. The lakes will be created as impoundments through the construction of dams across existing stream segments and bottomlands. In addition to their use for recreation, the lakes will be used to supply irrigation water to the development. It is anticipated that the proposed development will occur in at least three (3) phases over a period of approximately 15 years.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts. These could include alternative site layouts sites or alternate site locations.

3. *Scoping*:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to help identify significant issues and to receive public input and comment (see DATES).

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS alternatives: hydrologic and hydraulic regimes, wetlands, streams, cultural resources, utilities, socioeconomic characteristics, biological resources, threatened and endangered species, transportation systems, secondary impacts, cumulative impacts, environmental justice (effect on minorities and low income groups), and protection of children (E.O. 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency; U.S. Department of the Interior, Fish and Wildlife Service; Alabama Department of Environmental Management; Alabama Department of Conservation and Natural Resources; Alabama State Historic Preservation Officer; Alabama Department of Transportation; South Alabama Regional Planning Commission; Baldwin County; and the City of Bay Minette.

4. It is anticipated that the DEIS will be made available for public review in August 2004.

Ronald A. Krizman,

Chief, Regulatory Branch.

[FR Doc. 03–24614 Filed 9–26–03; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement for the Indian River Lagoon South Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare an integrated Project Implementation Report/Draft Supplement to the Final Environmental Impact Statement (PIR/DSFEIS) for the Central and Southern Florida (C&SF) Project, Indian River Lagoon—South Project. On October 11, 2002 a notice of availability was published in the **Federal Register** (67 FR 63421) for the C&SF Project, Indian River Lagoon—South Feasibility Study and Integrated Final Environmental Impact Statement. The PIR/DSFEIS is being prepared to address the requirements of the Water Resources Development Act of 2000 related to the Comprehensive Everglades Restoration Plan that were not addressed in the Feasibility Report and the FEIS. These requirements involve determination of water to be reserved for the natural system, savings clause, level of service for flood protection, the draft operations and monitoring plan and the ecological and water quality monitoring plan. The PIR/DSFEIS will also address a design refinement to the recommended plan identified during the Pre-construction Engineering and Design Phase.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dupes, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, by e-mail *michael.dupes@saj02.usace.army.mil*, or by telephone at 904–232–1689.

SUPPLEMENTARY INFORMATION:

a. *Study Area:* The study area remains the same as originally described in the Feasibility Report and FEIS.

b. *Project Scope:* The scope of the project remains the same as described in the Feasibility Report and FEIS.

c. *Public Involvement:* A public workshop will be conducted to notify the public of the WRDA 2000 requirements and of the change to the recommended plan. The exact location, date, and time of the workshop will be announced in public notices and local newspapers and on the Everglades Restoration Web site at fnl;*http://www.evergladesplan.org.*

d. *SEIS Preparation:* The integrated Project Implementation Report, including the draft SEIS is currently scheduled for publication in late 2003 or early 2004.

Dated: September 16, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–24613 Filed 9–26–03; 8:45 am]

BILLING CODE 3710–AJ–M

ENVIRONMENTAL PROTECTION AGENCY

[AZ–096–FIN; FRL–7564–3]

Adequacy Status of the Maricopa County, Arizona, Submitted CO Redesignation Request and Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted Maricopa County 2003 Carbon Monoxide (CO) Redesignation Request and Maintenance Plan are adequate for conformity purposes.

As a result of our finding, the Maricopa Association of Governments and the U.S. Department of Transportation must use the CO motor vehicle emissions budgets from the submitted CO Redesignation Request and Maintenance Plan for future conformity determinations.

DATES: This determination is effective October 14, 2003.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequacy.htm*, (once there, click on the ''What SIP submissions has EPA already found adequate or inadequate?'' button.)

You may also contact Wienke Tax, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (520) 622–1622 or *tax.wienke@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces our finding that the emissions budgets contained in the submitted Maricopa County 2003 Carbon Monoxide (CO) Redesignation Request and Maintenance Plan, submitted by the State of Arizona on behalf of the Maricopa Association of Governments, are adequate for conformity purposes. EPA Region IX made this finding in a letter to the State of Arizona, Department of Environmental Quality, on September 10, 2003. We are also announcing this finding on our conformity Web site: *http://www.epa.gov/otaq/transp/conform/adequate.htm*, (once there, click on the ''What SIP submissions has EPA already found adequate or inadequate?'' button).

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the motor vehicle emissions budgets, when considered together with all other emissions sources, are consistent with applicable requirements for a maintenance plan. We have preliminarily determined that the MAG 2003 CO Redesignation Request and Maintenance Plan meets the necessary emissions reductions and therefore, the motor vehicle emissions budgets can be found adequate. Please note that an adequacy review is separate from EPA's completeness review which is required by section 110(k)(1) of the Clean Air Act, and it also should not be used to prejudge EPA's ultimate approval of the submitted plan itself. Even if we find a budget adequate, the submitted plan could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination on the emissions budgets contained in the MAG 2003 CO Redesignation Request and Maintenance Plan.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–24559 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7563–5]

Availability of FY 02 Grant Performance Reports for States of Alabama, Florida, Mississippi and South Carolina; All Local Agencies Within the States of Alabama, Florida, and Tennessee; and the Local Agencies of Western North Carolina and Mecklenburg County in the State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of four state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Mississippi Department of Environmental Quality; and South Carolina Department of Health and Environmental Control); and 14 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Department of Planning and Environmental Protection, FL; Jacksonville Air and Water Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Dade County Air Quality Management Division, FL; Palm Beach County Health Department, FL; Pinellas County Department of Environmental Management, FL; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Memphis/Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Nashville-Davidson County Metropolitan Public Health Department, TN). The 18 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. The evaluations for the remainder of the State and local governments will be published at a later date.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the State of Alabama; Gloria Knight (404) 562–9064 for the States of Florida and Mississippi; Mary Fox (404) 562–9053 for the State of North Carolina; and Rayna Brown (404) 562–9093 for the States of South Carolina and Tennessee. They may be contacted at the above Region 4 address.

Dated: September 10, 2003.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 03–24411 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0334; FRL–7326–8]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on September 30, 2003. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on September 30, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 308–6309; e-mail address: *barrett.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the 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–2003–0334. 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 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

On a quarterly interval, the Exposure Modeling Workgroup meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
- European Union Activities.
- U.S. Department of Agriculture/Agricultural Research Service (USDA/ARS) Pesticide Properties Database.
- Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Model.
- Rice modeling.
- Watershed Regression for Pesticides (WARP) model.
- Spray Drift Task Force progress.
- AgDrift EPA review.
- EXAMINER.
- EXPRESS shell update.
- Pesticide Leaching U.S. (PLUS).
- Cumulative and Aggregate Risk Evaluation System (CARES).
- Drinking water exposure estimates for dietary risk.
- Environmental Fate and Effects Division (EFED) water quality projects.
- Perspective Groundwater (PGW) Database.
- EFED current issues in environmental fate for modeling.

4. Major Topics.

Morning Session

- Update on Tier II Ground Water Project.
- Progress in development of a user friendly pesticide environmental fate database to support risk assessments.
- Performance of PRZM in estimating pesticide leaching under different environmental conditions.
- EUFRAM: Developing a framework for probabilistic risk assesment of the environmental impact of pesticides.

Afternoon Session

- A novel method to extrapolate pesticide water monitoring data to estimate exposure.
- Using WARP model predictions and climatic time series data to simulate daily.
- Pesticide concentrations.
- Hybrid model approach to FQPA drinking water assessment: Methods for estimating daily time step exposure to pesticides using modeling informed by monitoring.

List of Subjects

Environmental protection, Modeling, Pesticides and pests.

Dated: September 24, 2003.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–24618 Filed 9–24–03; 3:23 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0324; FRL–7329–3]

Notice of Receipt of Requests to Cancel Certain Creosote and Acid Copper Chromate Wood Preservative Products, and/or to Terminate Certain Uses of Other Creosote Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants of pesticide products containing either creosote or acid copper chromate (ACC) to voluntarily cancel certain pesticide registrations and/or to amend to terminate certain uses of affected products. Specifically, the five registrants who are members of the Creosote Council III have requested to cancel the registrations for their creosote non-pressure treatment end-use products and/or to amend to terminate all non-pressure treatment uses of other creosote products. These registrants are requesting that these voluntary product cancellations and/or use terminations become effective December 31, 2004. Osmose, Inc., the sole registrant of ACC, is also requesting to immediately cancel the registration for its product with no provision for existing stocks. Neither the registrants of the affected creosote products nor that of the affected ACC product have requested any existing stocks provision. All registrants waived the 180–day comment period.

DATES: Unless a request is withdrawn by October 29, 2003, the Agency intends to issue orders granting these requests to

cancel certain products, and to amend to terminate certain uses. The Agency will consider withdrawal requests postmarked no later than October 29, 2003.

FOR FURTHER INFORMATION CONTACT:

Bonaventure A. Akinlosotu, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0653; e-mail address: *akinlosotu.bonaventure@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0324. 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.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel the registrations of four pesticide products and to amend to terminate certain uses of seven other pesticide products (See Tables 1 and 2). In a June 30, 2003 letter, which was received by the Agency on July 14, 2003, Osmose, Inc. requested voluntary cancellation of its ACC product. Similarly, in letters dated September 5, 2003, Coopers Creek Chemical Corporation, KMG-Bernuth, Inc., Koppers, Inc., Railworks Wood Products, and Rutgers Chemicals AG requested voluntary cancellation of certain creosote end-use products and/or amendments to terminate certain creosote end-uses of other creosote end-use products.

TABLE 1.—REQUESTS FOR CANCELLATION OF PRODUCTS

Registration No.	Product Name	Chemical Name
003008–00060	Osmose ACC 50% Wood Preservative	Chromic acid, Cupric acid
061468–00005	Coal Tar Creosote	Creosote
073408–00001	Creosote	Creosote
073408–00002	Creosote Solution	Creosote

The following creosote/coal tar creosote product uses would be affected by the requests for amendments to terminate non-pressure treatment uses of the products listed in Table 2 below: Home and farm use, ground line treatment of utility poles, end cuts, piling applications/repair, pole framing, and railroad tie uses/repair.

TABLE 2.—REQUEST FOR AMENDMENTS TO TERMINATE NON-PRESSURE TREATMENT USES

Registration No.	Product Name	Chemical Name
000363–00014	C-4 Brand Black Creosote Coal Tar Solution	Creosote
000363–00015	C-4 Brand Coopersote Creosote Oil	Creosote
061468–00006	Creosote	Creosote
061470–00001	KMG-B Coal Tar Creosote	Creosote
061483–0007	Creosote Oil-24CB	Coal tar creosote
061483–0008	Creosote/Coal Tar Solution	Coal tar creosote
061483–0009	Creosote Oil	Coal tar creosote

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, the Agency intends to issue orders canceling all of these registrations and granting the amendments affecting the use terminations. Users of these pesticides or anyone else desiring the retention of a registration or particular use should contact the applicable registrant directly before the lapse of this 30–day period.

Table 3 includes the names and addresses of record for all registrants of the products listed in Tables 1 and 2, in ascending sequence by EPA company number:

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENT TO TERMINATE USES

EPA Company No.	Company Name and Address
000363	Coopers Creek Chemical Corp., 884 River Road, West Conshohocken, PA 19428-2699
003008	Osmose Inc., 980 Ellicott Street, Buffalo, NY 14209–2398
061468	Koppers Inc., 436 Seventh Avenue, Pittsburgh, PA 15219–1800
061470	Rutgers Chemicals, 10611 Harwin Drive, Suite 402, Houston, TX 77036–1534
061483	KMG-Bernuth, Inc., 10611 Harwin Drive, Suite 402, Houston, TX 77036–1534
073408	Railworks Wood Products, 2525 Prairieton Road, Terre Haute, IN 47802

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for voluntary cancellation or amendment to terminate uses must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked no later than October 29, 2003. This written withdrawal of the request for cancellation or amendment to terminate uses will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation or use termination action, the effective date of cancellation and all other provisions of any earlier cancellation or use termination order are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical. This is in accordance with the Agency's statement of policy as set forth in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4).

Creosote. The registrants of affected creosote products have requested that the voluntary product cancellations and/or use terminations become effective December 31, 2004, with no provision for existing stocks.

ACC. The effective date of cancellation will be the date of the cancellation order. Osmose stated in its request that its affected product (EPA Reg. No. 3008–60) is no longer being manufactured or distributed by them and that, therefore, there is no need for a time period for the depletion of existing stocks.

List of Subjects

Environmental protection, Creosote, Acid copper chromate, Pesticides and pests.

Dated: September 23, 2003.

Frank Sanders

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 03–24560 Filed 9–26–03; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability and public meetings.

SUMMARY: The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; Federal and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; and adaptive management and monitoring. In addition, the NEPA Task Force reviewed other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and other implementation practices that would benefit federal agencies.

CEQ announces the availability of ''The Task Force Report to the Council on Environmental Quality—Modernizing NEPA Implementation'' that was published and presented to CEQ on September 24, 2003. The Report contains recommendations designed to improve federal agency decision making by modernizing the NEPA process. To further the work of the NEPA Task Force, CEQ will hold a series of regional public roundtables to raise public awareness of the NEPA Task Force draft recommendations and discuss the recommendations and their implementation. The first public roundtable will be held in Shelton, Washington on October 30–31, 2003, at the Squaxin Island Library and Research Center. Representatives from important constituent groups that have worked on NEPA issues have been invited to

participate in a discussion of the recommendations. The Squaxin Island Library and Research Center, dedicated in 2002, is a gathering and meeting place where all generations can communicate and share in the living culture and traditions of the Tribe and the environment of South Pugel Sound. Information about the Center is at *http://www.squaxinisland.org/pages/mlrc/mlrcinfo.html*. The Squaxin Island people are opening their Center to serve in its traditional role as a meeting and learning center for the community. The center is located about sixty miles south of Seattle-Tacoma International Airport and can be reached from the airport by taking I–5 S to US–101 N, and then proceeding right onto SE Old Olympic HWY, right onto SE Klah Che Min Drive and right onto SE Squaxin Drive. Announcements of future roundtables will be published on the NEPA Task Force web site and in the **Federal Register**.

DATES: The first NEPA Task Force recommendations public roundtable will be held on October 30 and 31 at the Squaxin Island Library and Research Center located at 70 SE Squaxin Lane, Shelton, Washington 98584. The session on October 30 will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 3:30 p.m. following the roundtable discussion. That session will end in the evening after the public's views have been presented. The session on October 31 will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 11 a.m. following the roundtable discussion.

ADDRESSES: Interested parties can review the Task Force report via the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http://www.ceq.eh.doe.gov/ntf/*. If you would like a printed copy, please mail a request to The NEPA Task Force, 722 Jackson Place, NW., Washington, DC 20585, or contact Bill Perhach at (202) 395–0826 to request a copy.

Dated: September 24, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–24527 Filed 9–26–03; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility; and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Leslie Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, CC Docket No. 98–67 (Declaratory Ruling), FCC 03–190.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 8 hours.

Total Annual Cost: None.

Needs and Uses: On August 1, 2003, the Commission released the Declaratory Ruling, *In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190.* In the *Declaratory Ruling*, the Commission clarifies that captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarifies that certain TRS mandatory minimum standards do not apply to captioned VCO service, and waives § 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time indicated herein, beginning on the date of release of this *Declaratory Ruling*. These waivers are contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604 (a)(1) and (a)(3) of the Commission's rules, which contain information collection requirements under the Paperwork Reduction Act, are not effective until approved by the Office of Management and Budget.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24484 Filed 9–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–55–A (Auction No. 55); DA 03–2897]

Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses in the Specialized Mobile Radio (''SMR'') Service scheduled to commence on February 11, 2004 (Auction No. 55). This document

also seeks comment on reserve prices or minimum opening bids and other auction procedures for Auction No. 55.

DATES: Comments are due on or before October 1, 2003 and reply comments are due on or before October 8, 2003.

ADDRESES: Comments and reply comments must be sent by electronic mail to the following address: *auction55@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Robert Krinsky (202) 418–0660. *For general auction questions:* Lyle Ishida (202) 418–0660 or Lisa Stover (717) 338–2888. *For service rule questions,* contact the Commercial Wireless Division, Wireless Telecommunications Bureau, as follows: Evan Baranoff, Policy and Rules Branch, (202) 418–0620; Bettye Woodward, Licensing and Technical Analysis Branch, (202) 418–1345; or Gary Devlin, Licensing and Technical Analysis Branch, (717) 338–2618.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 55 Comment Public Notice* released on September 17, 2003. The complete text of the *Auction No. 55 Comment Public Notice,* including the attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. *The Auction No. 55 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 55 Comment Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the auction of 60 Major Trading Area (''MTA'') licenses in the SMR Service in the 896–901 MHz and 935–940 MHz bands scheduled to commence on February 11, 2004 (Auction No. 55). The spectrum to be auctioned was previously associated with licenses that have been cancelled or terminated. A complete list of licenses available for Auction No. 55 is included as Attachment A of the *Auction No. 55 Comment Public Notice.*

2. The following table contains the channel block/frequency cross-reference for the 896–901 MHz and 935–940 MHz bands:

Channel block	Channel Nos.	Frequency (MHz)	Channel block	Channel Nos.	Frequency (MHz)
A	1–10	896.00625–896.13125 935.00625–935.13125	B	21–30	896.25625–896.38125 935.25625–935.38125
C	41–50	896.50625–896.63125 935.50625–935.63125	D	61–70	896.75625–896.88125 935.75625–935.88125
E	81–90	897.00625–897.13125 936.00625–936.13125	F	101–110	897.25625–897.38125 936.25625–936.38125
G	121–130	897.50625–897.63125 936.50625–936.63125	H	141–150	897.75625–897.88125 936.75625–936.88125
I	161–170	898.00625–898.13125 937.00625–937.13125	J	181–190	898.25625–898.38125 937.25625–937.38125
K	201–210	898.50625–898.63125 937.50625–937.63125	L	221–230	898.75625–898.88125 937.75625–937.88125
M	241–250	899.00625–899.13125 938.00625–938.13125	N	261–270	899.25625–899.38125 938.25625–938.38125
O	281–290	899.50625–899.63125 938.50625–938.63125	P	301–310	899.75625–899.88125 938.75625–938.88125
Q	321–330	900.00625–900.13125 939.00625–939.13125	R	341–350	900.25625–900.38125 939.25625–939.38125
S	361–370	900.50625–900.63125 939.50625–939.63125	T	381–390	900.75625–900.88125 939.75625–939.88125

Note: For Auction No. 55, licenses are not available in every market or for each channel block listed in the table. In one case, a license is available for only part of a market. See Attachment A of the Auction No. 55 Comment Public Notice, to determine which licenses will be offered.

3. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. We therefore seek comment on the following issues relating to Auction No. 55.

II. Auction Structure

A. Simultaneous Multiple-Round Auction Design

4. The Bureau proposes to award all licenses included in Auction No. 55 in a simultaneous multiple-round auction. As described further this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payments and Bidding Eligibility

5. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. In this case we have information available from the prior auction of 900 MHz SMR licenses (Auction No. 7). For Auction No. 55, we propose to calculate upfront payments on a license-by-license basis using the following formula: 5% (five percent) of the net amount of the winning bid in

Auction No. 7 for the corresponding license (same MTA and channel block).[1]

6. Accordingly, in Attachment A of the *Auction No. 55 Comment Public Notice,* we list all licenses included in Auction No. 55 and the proposed upfront payment for each license. We seek comment on this proposal.

7. We further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial eligibility. Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 55 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

8. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

9. We propose to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction generally will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

10. For Auction No. 55, we propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

11. We seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

12. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

13. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. **Note:** If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

14. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

15. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

16. We propose that each bidder in Auction No. 55 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

17. For Auction No. 55, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other

[1] For the license that is available for part of a market, the net amount of the winning bid from Auction No. 7. is first multiplied by the proportion of the population covered by the partial market to the population of the entire MTA.

reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

18. The Commission will conduct Auction No. 55 over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

19. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

20. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

21. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

22. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

23. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 55. The Bureau believes a minimum opening bid, which has been used in other auctions, is an effective bidding tool.

24. Specifically, for Auction No. 55, the Commission proposes the following license-by-license formula for calculating minimum opening bids: 5% (five percent) of the net amount of the winning bid in Auction No. 7 for the corresponding license (same MTA and channel block). [2]

25. The specific minimum opening bid for each license available in Auction No. 55 is set forth in Attachment A of the *Auction No. 55 Comment Public Notice.* We seek comment on this proposal.

26. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 900 MHz SMR band spectrum. We also seek comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

27. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

28. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

29. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

30. For Auction No. 55, we propose to calculate minimum acceptable bids by using a smoothing methodology, as we have done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a percentage increment, not to be confused with the bid increment. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license that has received many bids throughout the auction will have a higher percentage increment than a license that has received few bids.

31. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a

[2] For the license that is available for part of a market, the net amount of the winning bid from Auction No. 7 is first multiplied by the proportion of the population covered by the partial market to the population of the entire MTA.

weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i = (C * B_i) + ((1-C) * A_{i-1})$
I_{i+1} = smaller of $((1 + A_i) * N)$ and M
$X_{i+1} = I_{i+1} * Y_i$
Where,
A_i = activity index for the current round (round i)
C = activity weight factor
B_i = number of bids in the current round (round i)
A_{i-1} = activity index from previous round (round i-1), A_0 is 0
I_{i+1} = percentage increment for the next round (round i+1)
N = minimum percentage increment or percentage increment floor
M = maximum percentage increment or percentage increment ceiling
X_{i+1} = dollar amount associated with the percentage increment
Y_i = high bid from the current round

Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1
C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)—

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$
I_2 = The smaller of $((1 + 1) * 0.1) = 0.2$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1{,}000{,}000 = \$200{,}000$

iii. Minimum acceptable bid for round 2 = $1,200,000

Round 2 (3 new bids, high bid = $2,000,000)—

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$
I_3 = The smaller of $((1 + 2) * 0.1) = 0.3$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * \$2{,}000{,}000 = \$400{,}000$

iii. Minimum acceptable bid for round 3 = $2,400,000

Round 3 (1 new bid, high bid = $2,400,000)—

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
I_4 = The smaller of $((1 + 1.5) * 0.1) = 0.25$ or 0.2 (the maximum percentage increment)

ii. Caculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * \$2{,}400{,}000 = \$480{,}000$

iii. Minimum acceptable bid for round 4 = $2,880,000

32. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded}-(minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

33. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

34. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. We seek comment on these proposals.

D. High Bids

35. At the end of a bidding round, a high bid for each license will be determined based on the highest gross bid amount received for the license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), we propose to use a random number generator to select a single high bid from among the tied bids. If the auction were to end with no higher bids being placed for that license, the winning bidder would be the one that placed the selected high bid. However, the remaining bidders, as well as the high bidder, can submit higher bids in subsequent rounds. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

36. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

37. For Auction No. 55, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

38. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. We seek comment on these bid removal and bid withdrawal procedures.

39. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in

some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

40. Applying this reasoning, we propose to limit each bidder in Auction No. 55 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

F. Stopping Rule

41. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 55, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

42. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

43. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 55:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

44. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

IV. Conclusion

45. Comments are due on or before October 1, 2003, and reply comments are due on or before October 8, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction55@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 55 Comments and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

46. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary Michaels,

Legal Branch Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–24730 Filed 9–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 98–204; DA 03–2896]

Media Bureau Implements New EEO Form 396–C With Mandatory Electronic Filing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the mandatory electronic filing of the FCC Form 396–C. The Commission suspended the previous version of this form and adopted the current version with a new EEO rule. Paper version of the form will not be accepted after deadline date unless accompanied by request for waiver.

FOR FURTHER INFORMATION CONTACT: Estella Salvatierra (202) 418–1789, Policy Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice (''*PN*''), DA 03–2896, adopted and released September 23, 2003. The complete text of this *PN* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and may also be purchased from the Commission's copy contractor, Qualex International, Portals

II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893; facsimile (202) 863–2898, or *via* e-mail *qualexint@aol.com.*

Synopsis of Public Notice

1. By this *PN* the Media Bureau announces mandatory electronic filing for FCC Form 396–C, Multi-channel Video Program Distributor EEO Program Annual Report (September, 2003 Edition).

2. Mandatory electronic filing commenced on September 23, 2003. The paper version of the form will not be accepted for filing after September 23, 2003, unless accompanied by an appropriate request for waiver of the electronic filing requirement. The forms are due to be filed with the Commission by September 30, 2003. For 2003, only, filers may file the form up to midnight on October 15, 2003, and still be timely. Users can access the electronic filing system *via* the Internet from the Media Bureau's Web Site at: *http://www.fcc.gov/mb*

3. Randomly selected MVPDs will be required to fill out portions of the Supplemental Investigation Sheet (''SIS'') at the end of the form. Only those required to file the SIS will see a box checked on page one of the electronic version of the form next to the statement, ''Supplemental Investigation Sheet attached.'' For those required to file the SIS, we are requiring this year that job descriptions be provided only for the technicians category (two descriptions) and that only questions one, three, and five be answered in the question list. Units will not know that they are required to fill out the SIS until they begin the electronic filing process, but that process can be stopped, and information filled out saved, before actually filing the form. As with other electronic forms, filers mayh fill out part or all the form and press ''save'' to save what they have filled out. ''Savings'' does not file the form but it does keep what has been entered in the filer's form so that the filer may return to the form later and complete it by the due date. In order to accurately file a form, filers must press the ''File Form'' buttom and complete the filing process. The form may be printed at any stage while it is being filled out.

4. Pursuant to the *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes* (63 FR 66104, December 1, 1998, Notice of Proposed Rulemaking ''*NPRM*''), mandatory electronic filing was to commence six-months after a given form was made available for electronic use. The then Mass Media Bureau made the prior version of the Form 396–C, the Form 395–A, available for electronic use more than six months ago. The form was made available in connection with a broadcast Equal Employment Opportunity (''EEO'') rule adopted in February, 2000 that was subsequently vacated as a result of a Court order. As a result of the Court's action, the prior version of Form 396–C was suspended in January, 2001. The current version was adopted by the *Second Report and Order, (68 FR 670, January 7, 2003) and Third Notice of Proposed Rule Making (67 FR 77374, December 17, 2002) in MM Docket No. 98–204,* that adopted a new broadcast EEO rule. It is substantially similar to the version adopted in February, 2000, minus the annual employment report section that shows breakdown of unit workforce data by job category, race/ethnic group, and gender.

5. In the *NPRM,* which announced the Commission's electronic filing requirement, the Commission recognized the need for limited waivers of this requirement in light of the ''burden that electronic filing could place upon some licensees who are seeking to serve the public interest, with limited resources, and succeed in a highly competitive local environment.'' Such waivers will not be routinely granted and the applicant must plead with particularity the facts and circumstances warranting relief.

6. Instructions for use of the electronic filing system are available in the CDBS User's Guide which can be accessed from the electronic filing Web site. Special attention should be given to the details of the applicant account registration function, form filing function, and the fee form handling procedures, if a fee is required. Failure to follow the procedures in the User's Guide may result in an application being dismissed, returned, or not considered as officially filed.

7. Internet access to the CDBS public access system at the Commission's Web Site requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later.

8. For technical assistance using the system or to report problems, please contact the CDBS Help Desk at (202) 418–2MMB. To request additional information concerning specific broadcast applications, please call (202) 418–2700 (radio forms) or (202) 418–1600 (television forms).

FCC Notice Required by the Paperwork Reduction Act

9. On September 22, 2003, the Commission received notice that the Office of Management and Budget (OMB) had, on September 17, 2003, approved the information collection contained herein pursuant to the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13). The OMB Control Number for the FCC Form 396 is 3060–1033. The annual reporting burdens for this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data and completing and reviewing the collection of information, are estimated to be: 2,200 respondents, 10 minutes to 2.5 hours per response per annum, for a total annual burden of 3188 hours; no annual costs. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC, 20554. Please include the OMB Control Number: 3060–1033, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection *via* the Internet if you send them to *leslie.smith@fcc.gov* or call (202) 418–0217.

10. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. The OMB Control Number for this collection is 3060–1033. *The forgoing Notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–24621 Filed 9–26–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 14, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gregg Stephen Ward and Susan Annette Ward, both of Leedey, Oklahoma; to acquire control of Camargo Financial Company, Inc., and thereby indirectly acquire voting shares of The First State Bank, both of Camargo, Oklahoma.

Board of Governors of the Federal Reserve System, September 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24574 Filed 9–26–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Floridian Community Holdings, Inc., Davie, Florida; to become a bank holding company by acquiring by 100 percent of the voting shares of Floridian Community Bank Inc., both of Davie, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Grant Bancshares, Inc., Natchitoches, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Montgomery, Montgomery, Louisiana.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Humboldt Bancorp, Roseville, California; to merge with California Independent Bancorp, Yuba City, California, and thereby indirectly acquire voting shares of Feather River State Bank, Yuba City, California.

2. Western Sierra Bancorp, Cameron Park, California; to merge with Auburn Community Bancorp, Auburn, California, and thereby indirectly acquire voting shares of Auburn Community Bank, Auburn, California.

Board of Governors of the Federal Reserve System, September 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24573 Filed 9–26–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 12, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 12, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, September 23, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–24575 Filed 9–26–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC).

ACTION: Notification of the addition of new routine uses, modification of existing routine use, and system name revision.

SUMMARY: In accordance with the requirements of the Privacy Act, the Centers for Disease Control and Prevention (CDC) is publishing notice of a proposal to add three new routine uses, to amend one routine use, and to revise the system name of an existing National Institute for Occupational Safety and Health (NIOSH) system of records, 09–20–0147, ''Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.'' The purpose of the three new routine uses and one amended routine use is to clarify that NIOSH, under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), will release identifiable information associated with cancer-related claims to a number of entities described in the Supplementary Information Section below in order to implement dose reconstruction responsibilities and make informed judgments on addition of classes of workers to the Special Exposure Cohort. In addition, NIOSH is also revising the name of the system of records to ''Occupational Health

[1] Copies of the Minutes of the Federal Open Market Committee meeting on August 12, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Epidemiological Studies and EEOICPA Program Records. HHS/CDC/NIOSH.'' This modification is being done to facilitate the general public's search for the system of records containing EEOICPA program cancer claimant records associated with dose reconstruction.

DATES: CDC invites interested parties to submit comments on the proposed routine uses and system of records name change on or before October 29, 2003. The CDC will adopt the new routine uses and name change without further notice 30 days after the date of publication, unless CDC receives comments which would result in a contrary determination.

ADDRESSES: Comments should be addressed to the Centers for Disease Control and Prevention (CDC) Privacy Act Officer at the address listed below. Comments received will be available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday in the CDC Executive Park Facility, Building 37 Executive Park Drive, Room 3756C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Betsey S. Dunaway, Privacy Act Officer, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Executive Park Facility, Building 37, Room 3756C, Mailstop E–11, Atlanta, Georgia 30333, (404) 498–1506. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: CDC proposes to add three new routine uses and amend one routine use of an existing system of records within its National Institute for Occupational Safety and Health (NIOSH): 09–20–0147, ''Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.'' These new routine uses will be used by NIOSH's Office of Compensation Analysis and Support (OCAS) to fulfill its responsibilities under EEOICPA by releasing information to the indicated entities listed below:

1. Disclosure of personal identifying information associated with cancer-related claims under EEOICPA to the Department of Energy (DOE), other federal agencies, other government or private entities, and to private-sector employers to permit these entities to retrieve records required by NIOSH to reconstruct radiation doses;

2. Disclosure of completed dose reconstruction reports of cancer-related claimants under EEOICPA to the Department of Labor (DOL) and the Department of Energy (DOE) to fulfill HHS dose reconstruction regulations that require disclosure to the claimant, DOL, and DOE, and to fulfill DOE's notification obligations as required by EEOICPA (42 U.S.C. 7384n(e)(1)); and

3. Disclosure of personal identifying information associated with cancer-related claims under EEOICPA to identified witnesses as designated by the NIOSH Office of Compensation Analysis and Support (OCAS) so that these individuals can provide more detailed information on employment exposures to enable NIOSH to more accurately determine claimant radiation exposure levels and to determine the eligibility of claimant classes for membership in the Special Exposure Cohort.

The previous routine uses of the existing system notice are hereby incorporated and maintained by reference with one modification: A record from this system of records may be disclosed to a Member of Congress or a Congressional staff member submitting a verified request involving an individual who is entitled to the information when the individual has requested assistance from the Member or staff member. The Member of Congress or staff member must provide a copy of the individual's written request for assistance. The purpose of this modification is to clarify that records from this system of records will be released to a Member of Congress or a Congressional staff member only as a result of a documented request from an individual who is entitled to the information.

The new routine uses are compatible with the NIOSH system's purpose to evaluate the mortality, morbidity, and prevention of occupationally related diseases. The routine uses are compatible in that they will permit NIOSH, OCAS to better fulfill its responsibilities to complete dose reconstructions for cancer-related claims which will in turn enable DOL to determine award of benefits under the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C.S. 7384–7385) and they will also allow OCAS to evaluate petitions for inclusion in the Special Exposure Cohort.

In EEOICPA, Congress recognized the fact that since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered. It is further recognized that recurring exposures to radioactive substances and beryllium, even in small amounts, can cause medical harm. Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the DOE and at sites of vendors who supplied the Cold War effort were put at risk.

Because of this, Congress established the ''Energy Employees Occupational Illness Compensation Program.'' The purpose of the program is to provide for timely, equitable, and adequate compensation of covered employees and, where applicable, survivors of such employees, who incurred illnesses during the performance of their duties for the DOE and certain of its contractors and subcontractors. The Department of Labor is the federal agency with lead responsibility and is to administer the program. Within HHS, NIOSH's Office of Compensation Analysis and Support (OCAS) has responsibility under the Act to prepare individual dose reconstructions for specified cancer-related claims and to evaluate petitions for inclusion in the Special Exposure Cohort. The Special Exposure Cohort is a cohort of claimants for whom there is inadequate documentation to complete a dose reconstruction and a reasonable likelihood that their health was endangered by exposure to radiation. The Cohort members can only receive compensation if they develop one of 22 specified cancers.

Pertinent information and records used to develop individual dose reconstruction reports and to evaluate petitions for membership in the Special Exposure Cohort from the NIOSH system of records are acquired from two NIOSH program efforts. NIOSH's Health-Related Energy Research Branch (HERB) has been given access to the DOE's Privacy Act system of records to collect information, records, and data for the purpose(s) of evaluating the mortality and morbidity of occupationally related diseases to determine the cause and prevention of occupationally related diseases (Memorandum of Understanding with Department of Energy (DOE), 56 FR 9701, March 7, 1991 renewed 1995 and 2000 as part of DOE's Radiation Research Program; routine use formalizing data exchange between DOE and HHS added to Privacy Act System of Records DOE–10, ''Worker Advocacy Records''). This information is sufficient for NIOSH to fulfill research purposes to evaluate morbidity and mortality of occupationally related diseases, but is not in sufficient detail to complete dose reconstruction of EEOICPA claimants. Additionally, through its research program, NIOSH acquires vital status information, death certificates, and

records from the National Death Index and from State Vital Registrars.

NIOSH, Office of Compensation Analysis and Support (OCAS), is now proposing to add three new routine uses, the first of which is to enable the agency to disclose personal identifying information so that NIOSH can receive from DOE additional records and information needed to complete the dose reconstruction process for cancer-related claims and to evaluate applications for the Special Exposure Cohort. The information received by NIOSH, OCAS will include employment histories of claimants, production process and work history information, exposure and dosimetry monitoring data, safety and accident reports, and pertinent excerpts from employee medical records. In addition to DOE as a source for these records, NIOSH, OCAS is proposing a routine use to also allow the disclosure of personal identifying information to other federal agencies, other government or private entities and to private-sector employers to allow these entities to similarly locate necessary records so that NIOSH can complete dose reconstructions and evaluate petitions for inclusion in the Special Exposure Cohort. Such private entities might include, but are not limited to, previous DOE contractors and subcontractors who may no longer be in a contractual relationship with DOE.

A second routine use is needed to enable NIOSH, Office of Compensation Analysis and Support (OCAS), to provide the Department of Energy (DOE) and Department of Labor (DOL) with completed dose reconstruction reports in compliance with HHS' Dose Reconstruction Final Rule (42 CFR part 82), and the requirements of EEOICPA. Under EEOICPA (42 U.S.C. 7384n(e)(1)), DOE is required to provide, to each covered employee with cancer specified in 42 U.S.C. 7384l(9)(B), information specifying the estimated radiation dose of that employee during each employment specified in 42 U.S.C. 7384l(9)(B), whether established by a dosimetry reading, by a method established under 42 U.S.C. 7384n(d), or by both a dosimetry reading and such method. To assist DOE and DOL in fulfilling their legal obligations, the HHS dose reconstruction regulations require disclosure of the completed dose reconstruction to the claimant, DOE and DOL.

The third routine use is being proposed because NIOSH, Office of Compensation Analysis and Support (OCAS), often finds it necessary to contact witnesses who have been identified as possible sources of information that may assist NIOSH, OCAS in completing the dose reconstruction process or evaluating petitions for inclusion in the Special Exposure Cohort. In many instances NIOSH will be directed to speak with a chain of witnesses, one recommending another, and provision of personal identifying information to these witnesses will facilitate NIOSH's efforts without having to obtain consent for each release of personal identifying information from each claimant. This routine use will prevent the expenditure of a great deal of time and resources on the part of the Department of Health and Human Services (HHS) and facilitate more timely dose reconstruction reports and Special Exposure Cohort petition reviews.

Provision of identifiable information to the Department of Energy (DOE), other federal agencies, other government or private entities, private-sector employers, Office of Compensation Analysis and Support (OCAS) designated witnesses, and to members of Congress or their staff in response to requests, to aid NIOSH in providing dose reconstruction reports and evaluating petitions for inclusion in the Special Exposure Cohort are compatible with the purposes for which the records within this NIOSH Privacy Act system were collected. These new and modified routine uses will also significantly decrease the administrative cost and effort required to implement EEOICPA. Without these routine uses, HHS may be forced to request that each claimant for whom it performs a dose reconstruction provide written consent for each listed entity or appropriate designated individual to obtain access to the claimant's personal identifying information, employment, dosimetry, and related information. The Department of Health and Human Services would spend resources and time unnecessarily in requesting written consent for each entity listed above, transmitting each written consent to the appropriate entity and following up on each request for data. Routine uses permitting disclosure of such information as indicated would be cost effective, eliminate these inefficiencies, and be in the best interests of the claimants.

Permitting these entities to receive and use the information/data in these records, as appropriate and to the extent indicated, would not result in the unauthorized release of private information contained in the records. Information received by these entities will be maintained in a secure manner, as required by the Privacy Act. Access will be limited to employees whose official job duties require access to the records. Files and automated systems will be maintained under supervision of the appropriate personnel during normal working hours. Only authorized personnel may handle, retrieve, or disclose any information contained therein. Access to electronic records is controlled by password protection.

We have also made editorial changes throughout the system notice to enhance clarity and specificity and to accommodate normal updating changes.

Dated: September 16, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

SYSTEM NAME:

Occupational Health Epidemiological Studies and EEOICPA Program Records. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, Morgantown, WV 20505–2888.

Pittsburgh Research Laboratory, NIOSH, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Spokane Research Laboratory, NIOSH, 315 E. Montgomery Avenue, Spokane, WA 99207.

Office of Compensation Analysis and Support (OCAS), NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226. and

Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the

data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Working population exposed to physical and/or chemical agents or other workplace hazards that may damage the human body in any way. Some examples are: (1) Organic carcinogens; (2) inorganic carcinogens; (3) mucosal or dermal irritants; (4) fibrogenic materials; (5) acute toxic agents including sensitizing agents; (6) neurotoxic agents; (7) mutagenic (male and female) and teratogenic agents; (8) bio-accumulating non-carcinogen agents; (9) chronic vascular disease-causing agents; and (10) ionizing radiation. Also included are those individuals in the general population who have been selected as control groups. Workers employed by the Department of Energy and its predecessor agencies and their contractors are also included, as are cancer-related claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, hearing test results, smoking history, occupational histories, previous and current employment records, union membership records, driver's license data, demographic information, exposure history information and test results are examples of the records in this system. The specific types of records collected and maintained are determined by the needs of the individual study. Also included are records on cancer-related claimants under EEOICPA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, section 301, ''Research and Investigation'' (42 U.S.C. 241); Occupational Safety and Health Act, section 20, ''Research and Related Activities'' (29 U.S.C. 669); the Federal Mine Safety and Health Act of 1977, section 501, ''Research'' (30 U.S.C. 951); and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C.S. 7384, *et seq.*).

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases and injuries, to determine their causes, and to lead toward prevention of occupationally related diseases and injuries in the future. EEOICPA records are maintained to enable NIOSH to fulfill its dose reconstruction responsibilities under the Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done for obtaining a determination regarding an individual's health status and last known address. If the sources determine that the individual is dead, NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. If the individual is alive, NIOSH may obtain information on health status from disease registries or on last known address in order to contact the individual for a health study or to inform him or her of health findings. This information on health status enables NIOSH to evaluate whether excess occupationally related mortality or morbidity is occurring.

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected. Records may also be disclosed when deemed desirable or necessary, to the Department of Justice, and/or the Department of Labor, to enable that Department to effectively represent the Department of Health and Human Services and/or the Department of Labor in litigation involving the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

Records subject to the Privacy Act are disclosed to private firms for data entry, scientific support services, nosology coding, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Certain diseases or exposures may be reported to State and/or local health departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigation proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; and (2) administrative search warrants to obtain access to places of employment and relevant information therein and related contempt citations against an employer for failure to comply with a warrant obtained by the Institute; and (3) injunctive relief against employers or mine operators to obtain access to relevant information.

Disclosure may be made to NIOSH collaborating researchers (*e.g.*, NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

Disclosure of epidemiologic study records pertaining to uranium workers may be made to the Department of Justice to be used in determining eligibility for compensation payments to the uranium workers or their survivors.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

Disclosure of records or portions of records may be made to a Member of Congress or a Congressional staff member submitting a verified request involving an individual who is entitled to the information and has requested assistance from the Member or staff member. The Member of Congress or Congressional staff member must provide a copy of the individual's written request for assistance.

THE FOLLOWING ROUTINE USES APPLY ONLY TO EEOICPA PROGRAM RECORDS:

Disclosure of dose reconstructions, epidemiologic study records and employment and medical information pertaining to Department of Energy employees and other cancer-related claimants covered under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Labor to be used in determining eligibility for compensation payments to such claimants and in defending its determinations under the Act.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Energy, other federal agencies, other government or private entities and to private-sector employers to permit these entities to retrieve records required to reconstruct radiation doses and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

Completed dose reconstruction reports for cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be released to the Department of Energy and the Department of Labor to permit these entities to fulfill EEOICPA and HHS dose reconstruction regulation requirements to notify claimants of their dose reconstruction results.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to identified witnesses as designated by the Office of Compensation Analysis and Support to assist NIOSH in obtaining information required to complete the dose reconstruction process and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manager files, card files, computer tapes/disks and printouts, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

Name, assigned number, plant name, and year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

1. *Authorized Users:* A database software security package is utilized to control unauthorized access to the system. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff or contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Hard copy records are kept in locked cabinets in locked rooms (or equivalent safeguarding). Guard service in buildings provides screening of visitors. The limited access, secured computer room contains fire extinguishers and an overhead sprinkler system. Computer terminals and automated records are located in secured areas. Electronic anti-intrusion devices are in operation at the Federal Records Center.

3. *Procedural Safeguards:* Data sets are password protected and/or encrypted. Protection for computerized records both on the mainframe and the CIO Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and Vault Management System for secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

Employees and contractor staff who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either government or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, ''Safeguarding Records Contained in Systems of Records,'' of the HHS General Administration Manual; and part 6, ''Automated Information System Security,'' of the HHS Information Resources Management Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records. Data maintained in CDC Atlanta's Processing Center are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. The CIO LANs operate under the current CDC approved version of Novell Netware, and are in compliance with ''CDC & ATSDR Security Standards for Novell File Servers.''

RETENTION AND DISPOSAL:

Records are maintained in agency for three years after the close of the study. Records transferred to the Federal Records Center when no longer needed for evaluation and analysis are destroyed after 75 years for epidemiologic studies, unless needed for further study. Records from health hazard evaluations will be retained at least 20 years, and then disposed of in accordance with the CDC Records Control Schedule. EEOICPA program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years. Paper files that have been scanned to create electronic copies are disposed of after the copies are verified. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer, Division of Surveillance, Hazard Evaluations, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, Rm. 40A, MS R12, 4676 Columbia Parkway, Cincinnati, OH 45226.

Director, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), ALOSH Bldg., Rm. H–2920, MS H2900, 1095 Willowdale Road, Morgantown, WV 26505.

Director, Pittsburgh Research Laboratory, NIOSH, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Director, Spokane Research Laboratory, NIOSH, 315 E. Montgomery Avenue, Spokane, WA 99207.

Director, Office of Compensation and Support (OCAS), NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226.

Policy coordination is provided by: Director, National Institute for Occupational Safety and Health (NIOSH), Bldg. HHH, Rm. 715H, MS P–12, 200 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A subject individual will be granted direct access to a medical record if the system manager determines direct access is not likely to have adverse effect on the subject individual.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local governments and other available sources selected from those listed in Appendix I. Information is obtained directly from the individual and employer records, whenever possible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I—Potential Sources for Determination of Health Status, Vital Status and/or Last Known Address

Military records

Appropriate State Motor Vehicle Registration Departments

Appropriate State Driver's License Departments

Appropriate State Government Division of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Worker's Compensation, Disability Insurance

Retail Credit Association follow-up

Veterans Administration files

Appropriate employee union or association records

Appropriate company pension or employment records

Company group insurance records

Appropriate State Vital Statistics Offices

Life insurance companies

Railroad Retirement Board

Area nursing homes

Area Indian Trading Posts

Mailing List Correction Cards (U.S. Postal Service)

Letters and telephone conversations with former employees of the same establishment as cohort member

Appropriate local newspaper (obituaries)

Social Security Administration

Internal Revenue Service

National Death Index

Centers for Medicare & Medicaid Services

Pension Benefit Guarantee Corporation

State Disease Registries

[FR Doc. 03–24481 Filed 9–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0422]

Annual Stakeholder Meeting on the Implementation of the Medical Device User Fee Modernization Act of 2002 Provisions; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Annual Stakeholder Meeting on the Implementation of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). The topic of discussion is the agency's progress in implementing the various MDUFMA provisions, including the guidances FDA has issued on the new law.

DATES: The meeting will be held on December 3, 2003, from 9 a.m. to 5 p.m. at the Gaithersburg Hilton Hotel, 690 Perry Pkwy., Gaithersburg, MD 20877. Registration is required by November 3, 2003. All individuals wishing to make a presentation or to speak on an issue also must indicate their intent and the topic to be addressed and provide an abstract of the topic to be presented by November 3, 2003. Time for presentations will be limited to 10 minutes.

ADDRESSES: Send written requests to make a 10-minute oral presentation to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Send electronic requests to make a 10-minute oral presentation to *http://www.fda.gov/dockets/ecomments*. Include your name, title, firm name, address, telephone, and fax number with your request. All requests and presentation materials must include the docket number found in brackets in the heading of this document. Submit all requests and presentation materials by November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Sherrie Appel, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–2845, FAX: 301–443–8810, e-mail: *saa@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2002, MDUFMA amended the Federal Food, Drug, and

Cosmetic Act to include several new significant provisions. MDUFMA authorizes the following provisions: (1) User fees for certain premarket applications, (2) establishment inspections by FDA-accredited persons (third-parties), and (3) new requirements for reprocessed single-use devices. In addition, the new law contains several provisions that, while narrower in scope than the previously mentioned provisions, are significant changes to the device law. These include a modular review program for premarket approval applications (PMAs), electronic labeling for certain prescription devices, several provisions concerning devices for pediatric use, and a new labeling requirement that requires the manufacturer's name to appear on the device itself, with certain exceptions.

The agency has been working to implement the new law since its passage in October 2002. During this time, FDA has accomplished the following milestones: Established a user fee program with payment, billing, and appeals procedures; met statutory timeframes for the release of the accreditation criteria for persons conducting third-party inspections and the identification of certain reprocessed single-use devices that will be subject to additional premarket requirements; and published several guidances, such as those related to PMA supplement definitions and bundling of multiple devices in a single application. The agency is drafting other documents to be issued in the near future.

Agenda: On December 3, 2003, FDA is providing the opportunity for all interested persons to provide information and share their views on the implementation of MDUFMA. The agenda will consist of the following panel sessions that will include panelists from FDA, industry, and other stakeholders:

• Panel 1: How is the User Fees Process Working? This panel will consider the small business determinations and the user fee process and performance goals.

• Panel 2: Electronic Labeling and Identification of the Manufacturer on the Device. This panel will address electronic labeling for prescription devices intended for use in healthcare facilities (section 206 of MUDFMA (Public Law 107–250)) and identification of the manufacturer on the device itself (section 301 of MDUFMA (Public Law 107–250)).

• Panel 3: Bundling, Modular PMA, and Expedited PMAs. This panel will discuss guidances that address various PMA issues, including definitions of supplements, modular review, bundling multiple devices/indications for use in a single application, and clinical studies of pediatric devices.

• Panel 4: Third-Party Inspection Program. This panel will discuss implementation of the program, including eligibility criteria for use of a third party by a manufacturer.

• Panel 5: Reuse. This panel will discuss FDA-identified reprocessed single-use devices that will require premarket submission of validation data and the associated guidance for submission of data.

• General Discussion Period From the Floor: At the conclusion of the panels, there will be a general discussion from the floor.

Also at this time, FDA is particularly interested in receiving comments from stakeholders on other topics for discussion. The agency is interested in receiving recommendations about other provisions yet to be implemented both in terms of their priority for implementation and specifics on the implementation itself.

FDA will place an additional copy of any material it receives on the docket for this document (2003N–0422). Comments and materials may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (see **ADDRESSES**).

Registration: Online registration for the meeting is required by November 3, 2003. Acceptance will be on a first-come, first-served basis. There will be no onsite registration. Please register online at *http://www.fda.gov/cdrh/meetings/120303.html*. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the meeting. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/120303.html* by November 3, 2003. Persons without Internet access may register for the onsite meeting or to listen remotely by calling 301–443–2845 by November 3, 2003.

If you need special accommodations due to a disability, please contact Sherrie Appel at 301–443–2845 at least 7 days in advance.

Transcripts: Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

Dated: September 22, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–24494 Filed 9–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Cooperative Agreement to the Fund for the City of New York, on Behalf of the New York City Department of Health and Mental Hygiene and the Fund for Public Health in New York, Inc.

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice of award.

Catalog of Federal Domestic Assistance: #93.003.

SUMMARY: Notice is hereby given that a noncompetitive cooperative agreement award is being made to the Fund for the City of New York, on behalf of the New York City Department of Health and Mental Hygiene and the Fund for Public Health in New York, Inc. The award is being made to support the efforts of the New York City Department of Health and Mental Hygiene to develop model approaches for addressing the special needs of high density metropolitan areas with high levels of risk for bioterrrorism attacks and other public health emergencies.

This eighteen month agreement at a level of $5 million is being funded non-competitively because it is expected to provide useful information and guidance to this Department and to other health departments and levels of government regarding how to deal with threats and actual events in high density areas at high risk for attacks. One area of particular interest is developing and evaluating best practice guidelines for emergency preparedness in primary care settings. This includes developing effective models of clinic training. There has been concern expressed that the Federally Qualified Health Centers have not been sufficiently involved in regional planning for, and preparing to respond to, a bioterrorist event or other public health emergency. These clinics will likely serve a role with regard to triaging victims, as well as potentially offering mass prophylaxis. This effort will be designed to develop best practice guidelines and recommendations for primary care emergency management; develop an educational curriculum to disseminate best emergency practices to primary care centers; and test, evaluate and refine the guidelines, training curriculum, and template drills to share with primary care centers citywide.

A second area of interest is preparation of terrorism preparedness exercises. It is important to identify

operational strengths and opportunities for improvement through simulated exercises. Practical exercises or drills should both reinforce knowledge and uncover opportunities for improvement in written disaster plans. Biological disaster exercises should be of sufficient intensity to challenge the management and response operations during the exercise, in a way similar to what would be expected during an actual biological terrorist event. The goal is to develop and disseminate a group of hospital-based, validated, Web-accessible bioterrorism preparedness tabletop exercises.

Because of its population density, experience with previous terrorist attacks, and subsequent efforts to build a response capacity, New York City is uniquely qualified to demonstrate model approaches that would inform regional or national preparedness efforts. A strong evaluation focus is built into the entire project to ensure that products are produced which will allow other metropolitan areas to replicate successful elements of the project.

Authority: This award will be made pursuant to section 241 (Evaluation of Programs) of the Public Health Service Act as well as section 319C of the Public Health Service Act (Hospital Preparedness for and Response to Bioterrorism and Other Public Health Emergencies), CFDA#93.003.

FOR FURTHER INFORMATION CONTACT: Michael Millman, Director, Division of Information and Analysis, Office of Planning and Evaluation, Health Resources and Services Administration, Parklawn Building, Room 14–45, 5600 Fishers Lane, Rockville, MD 20857, Phone 301–443–0368.

Dated: August 14, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–24489 Filed 9–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Grant Awards

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Announcement of grant awards.

SUMMARY: The Office of Rural Health Policy (ORHP), HRSA is awarding the following grants to the States, as authorized. Section 1820 of the Social Security Act authorized the Medicare Rural Hospital Flexibility Program (MRHFP). Reauthorization is pending. The appropriation for this program is provided in Public Law 108–7 (Consolidated Appropriations Resolution, 2003). The purpose of this notice is to announce the grant awards. The grant year began on September 1, 2003.

Medicare Rural Hospital Flexibility Program Awards (CFDA# 93.241). These grants allow each State to designate a focal point of contact for this program. The MRHFP helps sustain the rural healthcare infrastructure, with the Critical Access Hospital (CAH) as the hub of an organized system of care (in those communities where they exist), through the mechanisms of the Flex program. These mechanisms include the State Rural Health Plan (SRHP), CAHs, networks, Quality Improvement and EMS integration initiatives. Additionally, MRHFP must foster the growth of collaborative rural delivery systems across the continuum of care at the community level with appropriate external relationships for referral and support.

The following grantees have received awards for the first year of a 5-year project period.

- AL—Alabama Department of Public Health, $480,000
- AK—State of Alaska Department of Health & Social Services, $544,000
- AZ—University of Arizona, $573,000
- AR—Arkansas Department of Health, $421,000
- CA—California State Department of Public Health, Department of Health Services, $326,200
- CO—Colorado Rural Health Center, $529,200
- FL—Florida Department of Health, $550,000
- GA—Georgia Department of Community Health, $585,000
- HI—Hawaii State Department of Health, $543,000
- ID—Idaho State Department of Health & Welfare, $474,890
- IL—Illinois Department of Public Health, $668,000
- IN—Indiana State Department of Health, $526,000
- IA—Iowa Department of Public Health, $465,000
- KS—Kansas State Department of Health and Environment, $620,000
- KY—University of Kentucky, Research Foundation, $583,800
- LA—Louisiana Department of Health and Hospitals, $385,000
- ME—Maine Department of Human Services, $435,000
- MA—Massachusetts Department of Public Health, $223,340
- MI—Michigan Department of Community Health, $513,600
- MN—Minnesota Department of Health, $685,000
- MS—Mississippi State Department of Health, $395,000
- MO—Missouri Department of Health, $407,750
- MT—Montana Department of Public Health and Human Services, $660,000
- NE—State of Nebraska, $630,000
- NV—University of Nevada, Reno, $578,000
- NH—State of New Hampshire, $365,500
- NM—State of New Mexico, $231,580
- NY—Health Research, Inc., New York, $421,250
- NC—North Carolina Department of Health and Human Services, $574,000
- ND—University of North Dakota, $655,000
- OH—State of Ohio—Department of Health, $600,000
- OK—Oklahoma State University, Center for Health Sciences, $614,000
- OR—Oregon Health & Sciences University, $653,850
- PA—Pennsylvania State Department of Public Health & Human Services, $357,390
- SC—South Carolina State Office of Rural Health, Inc., $452,560
- SD—South Dakota State Department of Health, $660,000
- TN—Tennessee State Department of Health, $517,000
- TX—Office of Rural Community Affairs, Texas, $615,000
- UT—Utah Department of Health, $371,000
- VT—Vermont State Department of Health, $234,250
- VA—Virginia State Department of Health, $352,000
- WA—Washington State Department of Health, $585,000
- WV—West Virginia Department of Health & Human Resources, $485,700
- WI—University of Wisconsin—Madison, $651,145
- WY—Wyoming State Department of Health, $379,300

FOR FURTHER INFORMATION CONTACT: Contact Forest Calico, Project Officer, Medicare Rural Hospital Flexibility Program, Office of Rural Health Policy, HRSA, 5600 Fishers Lane, Room 9A–55, Rockville, MD 20857, (301) 443–0835.

Dated: September 17, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–24490 Filed 9–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the fifth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on November 6, 2003, and from 9 a.m. to 5 p.m. on November 7, 2003, at the Renaissance Washington, DC Hotel, 999 Ninth Street, NW, Washington, DC. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 41 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear and discuss reports from the following ACOT subcommittees: Organ Supply Concerns, Recipient Concerns, Public Concerns, and Allocation Concerns.

The draft meeting agenda will be available on October 15 on the Department's donation Web site at *http://www.organdonor.gov/acot.html*.

A registration form is available on the Department's donation Web site at *http://www.organdonor.gov/acot.html*. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701. Individuals without access to the Internet who wish to register may call Lora Robinson with PSA at (703) 234–1753. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at 301–443–8653, by e-mail: *jkress2@hrsa.gov,* or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 16C–17, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentation of the subcommittee reports, members of the public will have an opportunity to provide comments on the subcommittee reports. Because of the Committee's full agenda and the time frame in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: September 23, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–24491 Filed 9–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The National Institutes of Health

Submission for OMB Review; Comment Request; Customer/Partner Satisfaction Surveys The Effectiveness of the National Institute on Drug Abuse's Publications Project

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 3, 2003, page 33168 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: The Effectiveness of NIDA's Publications Project. *Type of Information Collection Request: New. Need and Use of Information Collection:* This is a request for a three-year generic clearance to study the level of customer satisfaction in relation to public health information publications produced by the Institute. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The primary purpose of the Project is to assess NIDA's effectiveness in developing and disseminating selected public health information publications designed to promote the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. A multi-method approach (survey, in-person interviews, focus groups) will be used to determine the use and usefulness of selected NIDA public health information publications for several of NIDA's key audiences. Measures will include outcomes associated with the following variables: Knowledge/awareness of the publications, receipt of the publications, reading of the publications, use of the publications, perceived utility of the publications, and the impact of the publications on the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. *Frequency of Response:* Respondents will not be asked to respond more frequently than annually or biennially *Affected Public:* Individuals or households; state or local governments; organizations; businesses or educational institutions. *Type of Respondents:* Community coalition leaders, drug abuse treatment and prevention service providers, drug abuse researchers, Native Americans, middle school science and health educators, public health policy makers

and public health officials, and the general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 7,442. *Estimated Number of Responses per Respondent:* 1.14. *Average Burden Hours Per Response:* 424. *Estimated Total Annual Burden Hours Requested:* 3,267. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours
1. Community Coalition Leaders	1782	2	0.26	926
2. Drug Abuse Treatment and Prevention Service Providers	6042	1	0.42	2537
3. Drug Abuse Researchers	6020	1	0.42	2528
4. Native Americans and Native American Intermediaries	50	1	1.14	57
5. Middle School Science and Health Educators	3532	1	0.51	1801
6. Public Health Policy Makers and Public Health Officials	1800	1	0.36	648
7. The General Public	3100	1	0.42	1302
Total	22,326	1.14	.424	9,801
Annualized Burden Total	7,442			3,267

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (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 proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Denise Pintello, Project Officer, Office of Science Policy and Communications, NIDA/NIH/DHHS, 6001 Executive Boulevard, MSC 9591, Bethesda, MD 20892; or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or e-mail your request, including your address to: *dp276v@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 22, 2003.

Laura Rosenthal,

Executive Officer, National Institute for Drug Abuse, National Institutes of Health.

[FR Doc. 03–24459 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel (Committee).

This Committee shall advise the Director, NIH, and the Director, National Institute of Biomedical Imaging and Bioengineering, regarding concept review, research grant and cooperative agreement applications, and contract proposals relating to broad areas of biomedical imaging and bioengineering.

Duration of this Committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: September 17, 2003.

Elias Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–24461 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 meting 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 Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training, NCI Initial Review Group—Subcommittee F (IRG–F).

Date: November 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, room 8105, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support;

93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24462 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel FLAIR Review.

Date: November 11–13, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Peter J. Wirth, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.,gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24467 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel, Prevention Research and Epidemiology.

Date: November 3–5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 8751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, room 8045, Bethesda, MD 20892, 301/594–566.

(Catalogue of Federal Domestic Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research, 93.394, Cancer Detection and Diagnosis Research; 93.395; Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24470 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel, Novel Technology for in vivo Imaging (SBIR/STTR).

Date: November 6–7, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC North/Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24471 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel, 2 P01 CA006294–40 A2, Ang, K. Kian, MD PhD.
Date: November 3, 2003.
Time: 11 a.m. to 2 p.m.
Agenda: To review and grant applications.
Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer, Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Center Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24472 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 invasions of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Novel Technology for in Vivo Imaging (R21/R33).
Date: November 3–4, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.
Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research. 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower: 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committees Policy.

[FR Doc. 03–24473 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel, Balance Disorders.
Date: October 20, 2003.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD Training, Career Development and Conference Grant Review.
Date: October 29, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, EPS–400C, 6120 Executive Blvd. M.S.C. 7180, Bethesda, MD 20892–7180, (301) 496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Intraneural Auditory Prosthesis.
Date: October 30, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Cochlear Nucleus Prosthesis.
Date: October 30, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCH, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC 7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Neuroimaging in Aphasia Rehabilitation.
Date: November 5, 2003.
Time: 8 a.m. am. to 5 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: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, EPS–400C, 6120 Executive Blvd MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24460 Filed 9–26–03; 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 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 APPLICATION REVIEW.

Date: October 29, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIAAA, Willco Building, 6000 Executive Blvd., room 409, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol and Abuse and Alcoholism, 6000 Executive Blvd, suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.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: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24468 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee, Developmental Biology Subcommittee Meeting.

Date: October 15–17, 2003.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institute of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: Se[te,ber 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24469 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF 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 G08 Grant Review.

Date: October 16, 2003.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, 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: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24463 Filed 9–26–03; 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 R01 Grant Review.

Date: October 14, 2003.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, 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: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24464 Filed 9–26–03; 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 552(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, K22 Award.

Date: October 15, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20893.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24465 Filed 9–26–03; 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: Biomedical Library and Informatics Review Committee.

Date: November 13–14, 2003.

Time: November 13, 2003, 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 14, 2003, 7:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Merlyn M. Rodrigues, MD, PhD, 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: September 22, 2003.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–24466 Filed 9–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16221]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Hazardous Cargo Transportation Security will meet to discuss security issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: The Subcommittee on Hazardous Cargo Transportation Security will meet on Wednesday, October 22, 2003, from 8 a.m. to 4 p.m. and Thursday, October 23, 2003, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 17, 2003. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before October 17, 2003.

ADDRESSES: The Subcommittee on Hazardous Cargo Transportation Security will meet at the Department of Transportation Headquarters, Nassif Building, 400 7th Street, SW., Washington, DC, in Room 6332/36. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or LT Michael McKean, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on October 22–23, 2003

(1) Discuss potential addition of Ammonium Nitrate to the Certain Dangerous Cargo (CDC) definition.

(2) Discuss development of the implementation and compliance program for the regulations that promulgate maritime security

requirements that are mandated by the Maritime Transportation Security Act (MTSA) of 2002.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, 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 Executive Director and submit written material. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES** and **DATES**).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: September 23, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–24572 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Overtime Billing for Customs Inspectional Services; Expiration of User Fee Law

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document notifies the public that the customs user fee law (19 U.S.C. 589c) is set to expire as of midnight, September 30, 2003. Congress may extend the law by the date, in which case nothing will change with respect to the collection of customs user fees. The Bureau of Customs and Border Protection (CBP) is publishing this notice to keep the public fully informed of the fees that CBP will collect in the event the law is not extended. Inspectional fees collected by the Agriculture, Plant and Health Inspection Service under 21 U.S.C. 136a and 49 U.S.C. 80503 and by CBP under 8 U.S.C. 1356 will be unaffected.

EFFECTIVE DATES: In the event that the customs user fee law expires at midnight, September 30, 2003, the billing procedures identified in this document will take effect beginning October 1, 2003, and will be reflected in quarterly bills issued after that date. In the event that the customs user fee law is extended prior to midnight, September 30, 2003, nothing will change with respect to the collection of customs user fees. In the event that the user fee law is extended any time after midnight, September 30, 2003, the procedures identified in this document will cease to be applicable at that time and the procedures under the user fee law will be reinstated at that time in accordance with the provisions of the extension.

FOR FURTHER INFORMATION CONTACT: Ed Matthews, Office of Finance (202) 927–0552.

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272), as amended (codified at 19 U.S.C. 58c; hereafter, section 58c), authorized the U.S. Customs Service (now the Bureau of Customs and Border Protection and hereafter referred to as CBP) to collect fees for processing services by agency personnel relative to the following matters: (1) The arrival in the United States of commercial vessels; (2) the arrival of commercial trucks; (3) the arrival of rail cars; (4) the arrival of private vessels and aircraft; (5) the arrival of air and sea passengers; (6) dutiable mail packages; (7) customs broker permits; (8) the arrival of barges and bulk carriers from Canada or Mexico; and (9) and (10) imported merchandise. (*See* 19 U.S.C. 58c(1) through (10).) Under section 58c, CBP collects these fees and deposits them into the Customs User Fee Account. Monies from this account are designated to reimburse CBP for overtime compensation, premium pay, benefits on overtime, excess preclearance services, and foreign language proficiency awards.

Under section 58c(e)(6), during the period when the fees of section 58c(a) are authorized, no fees other than the fees of 58c(a) may be imposed for:

i. Cargo inspection, clearance, or other customs activity expense, or services performed;

ii. Agency personnel provided, in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

iii. For any preclearance or other agency activity, expense, or service performed, and any personnel provided outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States;

iv. Any activation or operation (including agency supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934; or

v. The designation or operation (including agency supervision) of any bonded warehouse under 19 U.S.C. 1555.

Under section 58c(j)(3), the fees set forth under section 58c(a) cannot be charged after September 30, 2003. If the customs user fee law is extended prior to midnight September 30, 2003, nothing will change with respect to the collection of customs user fees. If the customs user fee law is allowed to expire, CBP, effective on October 1, 2003, will bill the party in interest for requested special services under 19 CFR 24.17 and 24.18, pursuant to the authority of 31 U.S.C. 9701. CBP estimates that excess preclearance services, overtime billing for air passenger services, and overtime billing for sea passenger services in fiscal year 2004 will be $11,000,000, $53,500,000, and $5,300,000, respectively. The amounts to be recovered for other services are not readily available.

If the user fee law is extended anytime after implementation of the above fee collections authorized under 31 U.S.C. 9701 on October 1, 2003, fee collection under that statute will be discontinued and fee collection under section 58c will be resumed at that time.

CBP notes that inspectional fees collected by the Agriculture, Plant and Health Inspection Service (APHIS) under 21 U.S.C. 136a (relating to the agricultural quarantine inspection user fee) and 49 U.S.C. 80503 (relating to payments for inspection and quarantine services) will continue to be collected by that agency. Also, the immigration inspectional fees that CBP now collects under 8 U.S.C. 1356 (relating to passengers arriving in the United States on commercial vessels or aircraft), which had been collected by the legacy Immigration and Naturalization Service prior to its transfer to CBP effective on March 1, 2003, will continue to be collected by CBP.

Dated: September 25, 2003.

Carol A. Dunham,

Acting Assistant Commissioner, Office of Finance.

[FR Doc. 03–24678 Filed 9–26–03; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1494–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–1494–DR), dated September 20, 2003, and related determinations.

EFFECTIVE DATE: September 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Delaware, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Delaware.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal Assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funding under that program will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared major disaster:

Individual Assistance, including direct Federal assistance, for the counties of Kent, New Castle and Sussex.

Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for the counties of Kent, New Castle and Sussex.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24514 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1493–DR]

District of Columbia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the District of Columbia (FEMA–1493–DR), dated September 20, 2003, and related determinations.

EFFECTIVE DATE: September 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the District of Columbia, resulting from Hurricane Isabel on September 18, 2003, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the District of Columbia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated area, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funding under that program will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the District of Columbia to have been affected adversely by this declared major disaster:

The District of Columbia for Individual Assistance, including direct Federal Assistance and debris removal Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24513 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1481-DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 29, 2003:

Dixie and Taylor Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24516 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1487–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1487–DR), dated September 5, 2003, and related determinations.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 15, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24510 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1487–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1487–DR), dated September 5, 2003, and related determinations.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes, and flooding on August 26, 2003, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance and

Hazard Mitigation are later warranted, Federal funds provided under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Blackford, Boone, Clay, Delaware, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Owen, Putnam, Randolph, and Shelby Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24523 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1487–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1487–DR), dated September 5, 2003, and related determinations.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 5, 2003:

All counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24524 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1492–DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1492–DR), dated September 19, 2003, and related determinations.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal Assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funding under that program will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Individual Assistance, including direct Federal assistance, is authorized for the independent City of Baltimore, and the counties of Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil,

Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for the independent City of Baltimore, and the counties of Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24511 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1492–DR]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–1492–DR), dated September 19, 2003, and related determinations.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2003:

The City of Baltimore and all counties in the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24512 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1480–DR]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1480–DR), dated July 21, 2003, and related determinations.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 21, 2003:

Valley County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24515 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1489–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1489–DR), dated September 12, 2003, and related determinations.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Hampshire, resulting from severe storms and flooding on July 21, 2003, through August 18, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the

designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Cheshire and Sullivan Counties for Public Assistance.

Cheshire and Sullivan Counties are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24526 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1486–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1486–DR), dated August 29, 2003, and related determinations.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 29, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms, flooding, and tornadoes on July 21, 2003, through August 13, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Allegany, Cattaraugus, Chemung, Columbia, Delaware, Fulton, Greene, Livingston, Montgomery, Ontario, Rensselaer, Schuyler, Steuben, and Yates Counties for Individual Assistance.

Allegany, Cattaraugus, Chemung, Columbia, Delaware, Fulton, Livingston, Montgomery, Ontario, Schuyler, Steuben, and Yates Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24521 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1486–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1486–DR), datedAugust 29, 2003, and related determinations.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely

affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2003:

Madison, Sullivan, and Wyoming Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24522 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 2003:

Richland County for Individual Assistance.

Adams and Vinton Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24520 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1485–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1485–DR), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 12, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24507 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1485–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1485–DR), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 23, 2003:

Clarion, Lawrence, Potter, and Tioga Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24508 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1485–DR]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1485–DR), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 23, 2003:

Lackawanna County for Individual Assistance.

Lackawanna, Wayne, and Wyoming Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24509 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1488–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1488-DR), dated September 12, 2003, and related determinations.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding on July 21, 2003, through August 18, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Bennington, Orange, Windham, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24525 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1491-DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

September 18, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from Hurricane Isabel on September 18, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested and warranted, Federal funding under that program will also be limited to 75 percent of total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Louis H. Botta, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth to have been affected adversely by this declared major disaster:

Individual Assistance, including direct Federal assistance, for: The independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, Franklin, Hampton, Poquoson, Newport News, Alexandria, Williamsburg, Hopewell and Emporia, and the counties of Greensville, Southampton, Northampton, Accomack, Isle of Wight, Sussex, Surry, Prince George, Charles City, James City, York, Gloucester, Mathews, Middlesex, Lancaster, Northumberland, Westmoreland, and Richmond.

Debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program for: The independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, Franklin, Hampton, Poquoson, Newport News, Alexandria, Williamsburg, Hopewell and Emporia, and the counties of Greensville, Southampton, Northampton, Accomack, Isle of Wight, Sussex, Surry, Prince George, Charles City, James City, York, Gloucester, Mathews, Middlesex, Lancaster, Northumberland, Westmoreland, and Richmond.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24517 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration.

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491–DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, David Fukutomi, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Louis H. Botta as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24518 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1491–DR]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1491-DR), dated September 18, 2003, and related determinations.

EFFECTIVE DATE: September 20, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by

the President in his declaration of September 18, 2003:

The Independent Cities of Colonial Heights, Danville, Falls Church, Fairfax, Petersburg, Richmond, Staunton, and Waynesboro, and the counties of Arlington, Augusta, Brunswick, Caroline, Chesterfield, Essex, Fairfax, Fluvanna, Goochland, Henrico, Mecklenburg, Orange, Page, Prince William, Rockbridge, Spotsylvania, and Stafford for Individual Assistance, including direct Federal assistance, and debris removal (Category A) and emergency protective measures (Category B), under the Public Assistance program, including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–24519 Filed 9–26–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11120 and TSA–2002–11334]

Notice of Resumption of the September 11th Security Fee and the Aviation Security Infrastructure Fee Following Temporary Suspension

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice reminds air carriers, foreign air carriers, and the general public of the resumption of the imposition of the Passenger Civil Aviation Security Service Fee, also known as the September 11th Security Fee, and the Aviation Security Infrastructure Fee. Pursuant to a statutory requirement, TSA temporarily suspended these fees from June 1, 2003, through September 30, 2003. The suspension of these fees ends automatically at the end of the suspension period, September 30, 2003.

DATES: Imposition of the September 11th Security Fee and the Aviation Security Infrastructure Fee resumes on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: For technical matters contact: Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 5, TSA–14, 601 South 12th Street, Arlington, VA 22202; e-mail: *TSA-Fees@dhs.gov,* telephone: 571–227–2323. For legal issues and other matters contact: Susan Truax, Office of the Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 601 South 12th Street, Arlington, VA 22202; e-mail: *Susan.Truax@dhs.gov,* telephone: 571–227–1996.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 44940 and the Transportation Security Regulations at 49 CFR parts 1510 and 1511, respectively, air carriers and foreign air carriers are required to pay to TSA fees known as the September 11th Security Fee and the Aviation Security Infrastructure Fee (ASIF).

The September 11th Security Fee is a fee in the amount of $2.50 per enplanement imposed by TSA on passengers of domestic and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States. This fee is limited to $2.50 per enplanement for up to two enplanements (or up to $5) per one-way trip or four enplanements (or up to $10) per round trip. 49 CFR 1510.5(a). Section 118 of the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71; November 19, 2001) authorized TSA to impose the September 11th Security Fee to help pay TSA's costs of providing civil aviation security services. Under 49 CFR 1510.9(a) and (b), direct air carriers and foreign air carriers must collect from each passenger a September 11th Security Fee on air transportation sold on or after February 1, 2002.

The ASIF is a fee imposed by TSA on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation, based on each carrier's security costs incurred in the year 2000. Section 118 of the ATSA authorized TSA to impose the ASIF, to the extent that the September 11th Security Fee was insufficient to pay TSA's costs of providing civil aviation security services. Under 49 CFR 1511.5 and 1511.7(b), each air carrier and foreign air carrier engaged in air transportation must pay to TSA the ASIF incurred for each month by the last calendar day of the following month. For months up to and including September of 2004, the payment is 8.333 percent of the total amount of the air carrier's costs of screening passengers and property transported by passenger aircraft in the United States during calendar year 2000.

On April 16, 2003, the President signed into law the Emergency Wartime Supplemental Appropriations Act, 2003, (Pub. L. 108–11) (Appropriations Act), which among other things, prohibits the Under Secretary for Border and Transportation Security (BTS) of the Department of Homeland Security from imposing the September 11th Security Fee and the ASIF during the period beginning June 1, 2003, and ending September 30, 2003 (suspension period). TSA, which is an agency within the Department of Homeland Security and operating under the direction of the Under Secretary of BTS, is the agency charged with imposing these fees by regulation. Therefore, in order to implement the Appropriations Act, TSA published a temporary final rule on May 21, 2003 (68 FR 27747). The rule suspended these fees for the suspension period through temporary amendments to 49 CFR parts 1510 and 1511.

The temporary final rule expires automatically at the end of the suspension period. TSA is publishing this notice to remind carriers and the general public of the expiration of the temporary amendments to 49 CFR parts 1510 and 1511 and the resumption of both fees as of 12 a.m., Eastern Daylight Time, October 1, 2003. On that date, September 11th Security Fees will be imposed on air transportation sold after the end of the suspension period, in accordance with the temporary final rule, 49 CFR parts 1510, and prior guidance issued by TSA, including the interpretive letter of January 25, 2002.[1] This resumption of the September 11th Security Fee must be consistent with definitions and guidance provided in the temporary rule and 49 CFR 1510.9(b). Further, the ASIF will be imposed in accordance with 49 CFR part 1511 on affected carriers, with payments for October 2003 due to TSA no later than November 30, 2003.

Issued in Arlington, VA, on September 24, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–24617 Filed 9–24–03; 3:38 pm]

BILLING CODE 4910–62–P

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[1] An electronic copy of the letter may be obtained online by viewing Item 11 in TSA's regulatory Docket no. 11120 at *http://dms.dot.gov/search.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–75]

Notice of Submission of Proposed Information Collection to OMB: Affirmative Fair Housing Marketing Plan

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.

Developers of new projects describe their intent (marketing efforts) to assure that they meet the Fair Housing guidelines in how the project is marketed to the public.

DATES: *Comments Due Date:* October 29, 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 (2529–0013) 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: Affirmative Fair Housing Marketing Plan.

OMB approval number: 2529–0013.

Form numbers: HUD–935.2.

Description of the need for the information and its proposed use: Developers of new projects describe their intent (marketing efforts) to assure that they meet the Fair Housing guidelines in how the project is marketed to the public.

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of submission: On occasion, annually.

Reporting burden: Number of Respondent 3,006; Average response per respondent 1; Total annual responses 3,006; Average burden per response 3 hrs.

Total estimated burden hours: 9,018.

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: September 22, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–24450 Filed 9–26–03; 8:45 am]

BILLING CODE 4210–79–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–16]

Notice of Proposed Information Collection for Public Comment—Resident Opportunities and Self-Sufficiency (ROSS) Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* November 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The ROSS forms are used by the Department to collect information from Public Housing Agencies (PHAs), resident associations and nonprofit organizations as part of the ROSS grant the application process.

There are several forms used by the Department, each of which serve a different information collection purpose. The title, purpose, and estimated time it will take applicants to complete each form is described in the section below.

This Notice also lists the following information:

Title of Proposal: Information Collection for the ROSS Grant Program.

OMB Control Number: 2577–0229.

Description of the need for the information and proposed use: In order for the Department to ensure that applicants meet particular eligibility criteria and possess the capacity to operate federally-funded activities, the Department relies on information

provided by applicants through several forms.

The forms are used by the Department in the rating and ranking process. This process is conducted to evaluate applications from PHAs, resident associations and nonprofit organizations. The forms capture additional information from applicants that cannot be easily conveyed by other segments of the ROSS application. For example, questions that require narrative responses would not easily convey budget information.

Agency form numbers, if applicable:

• Form HUD–52751, ''Fact Sheet''. This form asks applicants to specify organization type, ROSS grant category to which they are applying, total number of housing units they will be serving, and in the case of resident organizations, information about their board and elections of the board. Estimated reporting time: 2 hours.

• Form HUD–52752, ''Certification of Consistency with the Indian Housing Plan''. This form asks Native American tribes to certify that the activities they propose are consistent with their tribe's HUD-approved housing plan. Estimated reporting time: 15 minutes.

• Form HUD–52753, ''Certification of Election of Resident Board''. This form asks applicants that are resident associations to certify that their board was duly elected. Estimated reporting time: one hour.

• Form HUD–52754, ''List of Resident Associations Participating''. This form asks applicants that are nonprofit organizations to list the resident associations they will be working with. Estimated reporting time: fifteen minutes.

• Form HUD–52755, ''Sample Contract Administrator Partnership Agreement''. This form provides a sample agreement for those applicants that are required to have Contract Administrators in place. Estimated reporting time: three hours.

• Form HUD–52756, ''Chart A: Program Staffing''. This form asks applicants to list key program staff, including contractor staff, role in the grant, percent of time they will spend working on grant-funded activities and cost to the grant. Estimated reporting time: two hours.

• Form HUD–52757, ''Chart B: Applicant/Administrator Track Record''. This form asks applicants that are nonprofit organizations to list the resident associations they will be working with. Estimated reporting time: fifteen minutes.

• Form HUD–52758, ''Suggested Performance Measures for the Resident Opportunity and Self Sufficiency Program''. This form provides suggested performance measures for applicants to use in their proposals. Estimated reporting time: not applicable.

• Form HUD–52759, ''Applicant Checklist and Submission Format for ROSS-Resident Services Delivery Models-Family''. This form provides a checklist to assist applicants—ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.

• Form HUD–52760, ''Applicant Checklist and Submission Format for ROSS-Resident Services Delivery Models—Elderly/Persons with Disabilities''. This form provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.

• Form HUD–52761, ''Applicant Checklist and Submission Format for ROSS-Homeownership Supportive Services''. This form provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated reporting time: Fifteen minutes.

• Form HUD–52762, ''Applicant Checklist and Submission Format for ROSS-Neighborhood Networks''. This form provides a checklist to assist applicants ensure that they have submitted all required forms and documentation. Estimated time to complete: Fifteen minutes.

• Form HUD–52763, ''SAMPLE ROSS-RSDM Family Work Plan''. This form provides applicants with a sample format to use to submit their proposed work plan. The sample work plan is broken down to include goals, activities, tasks, target dates, performance measures and deliverables. Estimated time to complete: Four hours.

• Form HUD–52764, ''SAMPLE ROSS–RSDM Elderly/Persons with Disabilities Work Plan''. This form provides applicants with a sample format to use to submit their proposed work plan. The sample work plan is broken down to include goals, activities, tasks, target dates, performance measures and deliverables. Estimated time to complete: four hours.

• Form HUD–52765, ''SAMPLE ROSS—Homeownership Supportive Services Work Plan''. This form provides applicants with a sample format to use to submit their proposed work plan. The sample work plan is broken down to include goals, activities, tasks, target dates, performance measures and deliverables. Estimated time to complete: four hours.

• Form HUD–52766, ''SAMPLE ROSS—Neighborhood Networks Business Plan''. This form provides applicants with a sample format to use to submit their proposed business plan. The sample business plan asks applicants to think about their goals, target populations, resources and how to become sustainable once grant funding expires. Estimated time to complete: six hours.

• Form HUD–52767,'Family Self-Sufficiency Funding Request Form''. This is a new form which asks renewal applicants to the FSS program to provide information about their past program including information about their participants, program successes, and their reporting to HUD. The form asks applicants who are applying to the FSS program for the first time, how many positions they are applying for and information about potential participants. Estimated time to complete: two hours.

Members of affected public: Local, State, or Tribal Governments, Resident Associations, Not-for-profit Institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

For ROSS–RSDM Family: 850 respondents, one response per year; 12.5 hours per response; 10,625 total burden hours.

For ROSS–RSDM Elderly: 850 respondents, one response per year; 12.5 hours per response; 10,625 total burden hours.

For ROSS—Homeownership Supportive Services: 850 respondents, one response per year; 12.5 hours per response; 10,625 total burden hours.

For ROSS—Neighborhood Networks: 850 respondents, one response per year; 14.5 hours per response; 12,325 total burden hours.

For ROSS—Family Self-Sufficiency: 850 respondents, one response per year; 2 hours per response; 1,700 total burden hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 22, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–24451 Filed 9–26–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–12]

Conference Call for the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public.

DATES: The conference call will be held on Wednesday, October 8, 2003, from 10 a.m. to 12 noon.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can log onto NFPA's website for instructions on how to participate and for contact information for the conference call: *http://www.nfpa.org/ECommittee/HUDManufacturedHousing/hudmanufacturedhousing.asp.* Alternately you may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this conference call is to discuss the Consensus Committee's review and recommendations to the Secretary on the draft Proposed Installation Standards.

Tentative Agenda

A. Roll Call
B. Continued Discussion of draft Proposed Installation Standards
C. Adjournment

Dated: September 17, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–24449 Filed 9–26–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before October 29, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–073204

Applicant: Ronald Spier, San Bernardino, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–073416

Applicant: Siskiyou National Forest, Grants Pass, Oregon.

The applicant requests a permit to remove/reduce to possession (collect seeds) the *Arabis macdonaldiana* (McDonald's rock-cress) in Josephine County, Oregon, for the purpose of enhancing its survival.

Permit No. TE–062907

Applicant: Andrew McGinn Forde, Agoura Hills, California.

The permittee requests an amendment to take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax trailii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–074187

Applicant: Stacey Ostermann, Davis, California.

The applicant requests a permit to take (harass) the peninsular bighorn sheep (*Ovis canadensis nelsoni*) in conjunction with research in San Diego County, California, for the purpose of enhancing its survival.

Permit No. TE–074658

Applicant: Julia Dumars, Sacramento, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California

for the purpose of enhancing their survival.

Permit No. TE–074601

Applicant: Jessica Delich, Gold River, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (Branchinecta conservatio), the longhorn fairy shrimp (Branchinecta longiantenna), the Riverside fairy shrimp (Streptocephalus wootoni), the San Diego fairy shrimp (Branchinecta sandiegonensis), and the vernal pool tadpole shrimp (Lepidurus packardi) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–053379

Applicant: Christine Tischer, Orange, California.

The permittee requests an amendment to take (*harass by survey*) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (Branchinecta sandiegonensis), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–074955

Applicant: Susan Scatolini, San Diego, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (Lepidurus packardi) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–068799

Applicant: Mikael Romich, San Bernardino, California.

The applicant requests a permit to take (harass by survey) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with demographic studies in San Bernardino, Riverside, Los Angeles, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–050122

Applicant: California Department of Fish and Game, Bishop, California.

The permittee requests an amendment to take (harass by survey, capture, handle, radio collar, and release) the peninsular bighorn sheep (*Ovis canadensis nelsonii*) in conjunction with demographic and life history studies in Riverside and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–075112

Applicant: Gregory Chatman, Rialto, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-075145

Applicant: David Elliott, La Habra, California.

The applicant requests a permit to take (survey, mark, PIT-tag, recapture, and release) the mountain yellow-legged frog (*Rana muscosa*) in conjunction with surveys in Los Angeles and San Bernardino Counties, California, for the purpose of enhancing its survival.

Permit No. TE–702631

Applicant: Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to remove/reduce to possession *Polygonum hickmanii* (Scotts Valley polygonum) in conjunction with recovery efforts throughout the range of the species for the purpose of enhancing its propagation and survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: September 4, 2003.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–24479 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 29, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–076969

Applicant: Thomas J. Greek, Corona CA,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–077020

Applicant: Barbara H. Watson, East New Market, MD,

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species

Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–075014

Applicant: Norman L. Delan, JR., Fleetwood, PA,

The applicant requested a permit to import a polar bear (Ursus maritimus) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use on August 18, 2003, (68 FR 49511). Subsequent to this publication, the Service determined that the polar bear was actually sport hunted from the Northern Beaufort Sea polar bear population. Therefore, we are republishing the request with the correct population.

PRT–072002

Applicant: Michael VandeMaele, Mattawan, MI,

The applicant requested a permit to import a polar bear (Ursus maritimus) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use on June 5, 2003 (68 FR 33734). Subsequent to this publication, the Service determined that the polar bear was actually sport hunted from the Southern Beaufort Sea polar bear population. Therefore, we are republishing the request with the correct population.

PRT–073810

Applicant: Virgil R. Graber, Orrville, OH,

The applicant requested a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use on August 27, 2003 (68 FR 51588). Subsequent to this publication, the Service determined that the polar bear was actually sport hunted from the Viscount Mellville polar bear population prior to April 30, 1994. Therefore, we are republishing the request with the correct population.

Dated: September 12, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–24444 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
072605	Charles C. Adams, Jr	68 FR 40291; July 7, 2003	Sept. 11, 2003.
073841	Ryan C. Hoerauf	68 FR 41167; July 10, 2003	Sept. 11, 2003.

Dated: September 12, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–24445 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW158843]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201(b), and to the regulations adopted at 43 CFR part 3410, all interested parties are hereby invited to participate with Antelope Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell and Converse Counties, Wyoming:

T. 40 N., R. 71 W., 6th P.M., Wyoming
Sec. 3: Lots 15–18;
Sec. 4: Lots 5–20;
Sec. 5: Lots 5–7, 10–15, 17–20;
Sec. 8: Lots 2–4;
Sec. 9: Lots 1, 2, 4, 5, 7, 8;
Sec. 10: Lots 3–6;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 28: Lots 1, 2, 5–16;
Sec. 29: Lots 5–16;
Sec. 32: Lots 1–4, 6–11, 13–16;
Sec. 33: Lots 1–16.

Containing 3,859.82 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain data to assess coal quality.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan (serialized under number WYW158843) are available for review during normal business hours in the following offices: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office,2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in ''The News-Record'' of Gillette, WY, and ''The Douglas Budget'' of Douglas, WY, once each week for two consecutive weeks beginning the week of September 29, 2003, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Antelope Coal Company no later than October 29, 2003. The written notice should be sent to the following addresses: Antelope Coal Company, Attn: Patrick Baumann, P.O. Box 3008, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: August 13, 2003.

Phillip C. Perlewitz,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 03–23449 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR118–6333–DT, HAG03–0218]

Notice of Availability of the Record of Decision for the Approved Amendments to the Medford Resource Management Plan for the Kelsey Whisky Landscape Management Planning Area

AGENCY: Glendale Resource Area, Medford District, Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management (BLM) announces the availability of the approved Amendment to the Medford Resource Management Plan (RMPA) for the Kelsey Whisky Landscape planning area.

The Medford District Manager and Glendale Resource Area Field Manager will subsequently be proposing decisions to implement specified wildlife habitat enhancement, fuels treatments, forest density management, commercial timber harvests and road construction projects identified in Alternative 1 of the Final Environmental Impact Statement (EIS)

DATES: The approved Medford RMP amendment decisions are effective immediately. Subsequent project or RMP implementation actions, such as timber sales, will occur over the next five-seven years and be announced locally and provide for additional public reviews. These projects are described in the preferred alternative of the FEIS and will be subject to 15-day protest periods as provided by 43 CFR 5003. Those decisions will be announced to the public through the publication of timber sale notices or their equivalent in *The Grants Pass Daily Courier* and *Umpqua Free Press* newspapers, as well as posted on the Medford District Web site at *http://www.or.blm.gov/Medford* under ''Planning Documents''.

FOR FURTHER INFORMATION CONTACT: Lynda L. Boody, Field Manager, Glendale Resource Area, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504, and 541–618–2279.

SUPPLEMENTARY INFORMATION: The analysis area encompasses approximately 104,000 acres of public land managed by the Glendale Resource Area, Medford District, BLM, located in Josephine, Douglas and Curry counties in southwestern Oregon. The analysis document was prepared in conformance with Section 202 of the Federal Land Policy and Management Act and associated BLM planning regulations at 43 CFR 1610.5–5 and National Environmental Policy Act, the Endangered Species Act and other applicable laws, regulations and policies.

The BLM Oregon State Director's decision amends the Medford District Resource Management Plan by adding off-highway vehicle (OHV) restrictions to the transportation plan for a total reduction of 16.6 miles through road decommissioning and road closures with gates and barricades. In addition, 21.2 miles of existing roads would be improved or reconstructed and 1.5 miles of temporary roads authorized to facilitate transportation and management for other actions in the area. The State Director also determined that there was no immediate need to designate any special management areas, and authority or need to re-inventory for areas with wilderness characteristics.

Single copies of the draft and final environmental impact statements and the approved Medford RMP amendment document are available at the Medford District Office. Single copies will also be available for inspection during normal working hours at the Oregon State Office, Public Room, 333 SW 1st Avenue, Portland, Oregon, 97204. The document may also be reviewed on the BLM Web site at *http://www.or.blm.gov/Medford* under ''Planning Documents''.

The road closure or transportation plan decisions amending the Medford District Resource Management Plan are effective immediately. Public participation has occurred throughout the planning process. A Notice of Intent was published in the **Federal Register** on June 7, 1999 and the Draft EIS Notice of Availability was published in the **Federal Register** on April 12, 2002. Public comments were solicited during scoping and through a 90 day comment period for the Draft EIS. The comments were analyzed and utilized where applicable to clarify and strengthen the Final EIS. A Final EIS was published March 21, 2003 and was available to the public for 30 days. Two protests on the planning component of the Final EIS were resolved. There were no formal findings of inconsistencies with officially approved or adopted natural resource related plans, programs or policies by the Governor of Oregon, per 43 CFR 1610.3–2(e).

Authority: Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA).

Dated: July 2, 2003.

Lynda L. Boody,

Field Manager Glendale Resource Area, Medford District Office.

[FR Doc. 03–24506 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Intent To Prepare an Environmental Impact Statement for the Las Vegas Valley Disposal Area as Expanded by the Clark County Conservation of Public Land and Natural Resources Act of 2002, Pub. L. 107–282, November 6, 2002, as Well as Other Designated Disposal Areas Within the Las Vegas Valley

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for land disposal and other land use authorizations in the Las Vegas Valley.

SUMMARY: This document provides notice that the BLM intends to prepare a comprehensive EIS with the specific purpose to authorize transfer of title disposal actions or uses of public land in the Las Vegas Valley. The project area consists of all lands currently identified for disposal within the Las Vegas

Valley, including the Las Vegas Valley disposal area, the Valley West Disposal area and other legislatively authorized disposal areas. This does not preclude other authorized uses of public lands such as application for Rights-of-Way, Leases and Recreation and Public Purpose uses located in Clark County, Nevada, Hydrographic Basin 212. The EIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. Completion of this EIS effort will ensure the intent of Congress as portrayed in the Southern Nevada Public Lands Management Act is met by providing land for organized local community development. The BLM will work collaboratively with all the interested public. The public scoping process will help identify issues and concerns based on potential build-out of the Las Vegas Valley as well as other potential uses of lands within Hydrographic Basin 212. This is critical as Basin 212 is currently classified as a serious non-attainment area for Particulate Matter 10 microns or less in size (PM10) and Carbon Monoxide (CO).

DATES: This notice initiates the public scoping process. Comments and concerns on issues can be submitted in writing to the address listed below and will be accepted throughout the 30-day scoping period. All public meetings will be announced through the local news media, newsletters, and the BLM web site at *http://www.nv.blm.gov* at least 15 days prior to the meeting. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the EIS scoping and preparation period. The BLM will announce the locations and times for public scoping meetings at least fifteen days prior to the actual meeting dates. At this time, the BLM anticipates meetings will be held in late September and early October. Times and places will be posted on our web site as well as in notices in the local newspapers. Early participation is encouraged and will provide guidance and suggestions for future development within the Las Vegas Valley. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the BLM draft EIS.

ADDRESSES: Written comments should be sent to the Bureau of Land Management, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301; Fax (702) 515–5023. Documents pertinent to this proposal may be examined at the Las Vegas Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeffrey Steinmetz, BLM, Las Vegas Field Office, Telephone (702) 515–5097; email *jsteinme@blm.gov.*

SUPPLEMENTARY INFORMATION: Public Law 107–282 added approximately 22,000 acres to the existing Las Vegas Valley Disposal Area, by amending the existing boundary defined and approved in the Southern Nevada Public Lands Management Act, Pub. L. 105–263. Shortly after approval of Pub. L. 107–282, the BLM experienced a rapid increase in the requests for public land disposal. Public Law 107–282 significantly increased the amount of land available for disposal in the Las Vegas Valley. This created an immediate need to augment the impact analysis, especially the cumulative impact analysis contained in the Las Vegas Resource Management Plan, signed October 5, 1998.

The changing needs and interests of the local governments and public relating to land for growth within the Las Vegas Valley necessitates a comprehensive update to the analysis in the existing Las Vegas Resource Management Plan, EIS. The major issue themes that will be addressed in the EIS include: Impacts to air quality; impacts to surface water hydrology and water quality; impacts to water use based on increased population; protection of federally-listed species, state-listed species, and BLM sensitive species; analyze development scenarios based on local community development land use plans; minimizing visibility impacts; balancing conflicting and compatible land uses; protection of cultural and paleontological resources; environmental justice, social and economic impacts, cumulative impacts of the project for the entire 212 hydrologic basin based on build-out (build-out will include sales, and other land use authorizations); and assessment of land surface conditions.

After gathering public comments on what issues the EIS should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the EIS;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of the EIS.

Rationale will be provided in the EIS for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the EIS. The public is encouraged to help identify these questions and concerns during the scoping phase.

BLM is currently working with the Argonne National Laboratory to provide all baseline data as well as a predictive model for air impacts within the Las Vegas Valley. This analysis will be incorporated into the Las Vegas Valley Disposal EIS as the best available data to complete the cumulative impact analysis portion of the EIS.

An interdisciplinary approach will be used to develop the EIS in order to consider the variety of resource issues and concerns identified. Disciplines involved in the EIS process will include specialists with expertise in soils, minerals and geology; hydrology; botany; wildlife; transportation; visual resources; air quality; lands and realty; outdoor recreation; archaeology; paleontology; and sociology and economics.

Comments, including names and street addresses of respondents, will be available for public review at the Las Vegas Field Office during regular business hours (7:30 a.m. through 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: August 14, 2003.

Angie C. Lara,

Acting Field Manager.

[FR Doc. 03–24666 Filed 9–25–03; 10:46 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–910–03–1820–XP]

Notice of Public Meetings; Western, Central, Eastern Montana, and Dakotas Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana, Central Montana, Eastern Montana, and Dakotas Resource Advisory Councils will meet as indicated below.

DATES: All four RACs will meet jointly on October 29, 2003. The joint meeting will begin at 8 a.m. and will be held at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana. Topics to be discussed include Sustaining Working Landscapes and the National Sage-Grouse Habitat Conservation Strategy. A public comment period will be held from 1–2 p.m.

Three RACs will also hold individual meetings. The Central Montana RAC will meet at 5:30 p.m. on October 28, 2003, and will continue its meeting on October 30, 2003, at 8 a.m. at the BLM Montana State Office at 5001 Southgate Drive, Billings, Montana. It will discuss the Upper Missouri River Breaks National Monument Resource Management Plan (RMP), Montana/Dakotas Off-Highway Vehicle policy priority setting, and the Blackleaf Environmental Impact Statement (EIS). A public comment period will be held at 8 a.m. on October 30, 2003.

The Eastern Montana RAC will meet on October 30, 2003, at 8 a.m. at the BLM Montana State Office at 5001 Southgate Drive, Billings, Montana. Among its items of discussion will be coal bed natural gas development in the Powder River Basin. Its public comment period will be at 11:30 a.m.

The Western Montana RAC will meet on October 30, 2003, at 8 a.m. at the Hampton Inn, 5110 Southgate Drive, Billings, Montana. The public comment period will be at 11 a.m. Among the agenda items are the Butte RMP and an update on the Limestone Hills Training Area EIS. The public comment period will be at 11:30 a.m.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana and the Dakotas. All meetings are open to the public. The public may present written comments to the Councils. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Mary Apple, State RAC Coordinator, at the BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101, at 406–896–5258.

Dated: September 23, 2003.

A. Jerry Meredith,

Acting State Director, Montana State Office.

[FR Doc. 03–24480 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF LABOR

[Prohibited Transaction Exemption 2003–24]

Deutsche Bank AG and Its Affiliates; and JPMorgan Chase Bank and Its Affiliates (Collectively, the Applicants)

AGENCY: Department of Labor.

ACTION: Notice of technical correction.

On August 14, 2003, the Department of Labor (the Department) published in the **Federal Register** (68 FR 48637) an individual exemption which permits the purchase of any securities by an asset management affiliate of the Applicants (the Asset Manager), on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund, for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an Affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where any broker-dealer affiliate of the Applicants is a manager or member of such syndicate (*i.e.*, ''affiliated underwriter transaction'' or ''AUT''), and/or where an affiliated trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (*i.e.*, an ''affiliated trustee transaction'' or ''ATT'').

Section I(n)(5) of the exemption requires explicit notification to an Independent Fiduciary that the authorization to engage in the covered transaction may be terminated, without penalty (*see* the third column on 68 FR 48639). The eighth line therein should read as follows:

''* * * *on* no more than five days' notice by * * *'' [emphasis added]

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lefkowitz of the Department, telephone (202) 693–8546.

Signed at Washington DC this 24th day of September, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 03–24593 Filed 9–26–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11167]

Notice of Proposed Exemption for Certain Transactions Involving Aetna Life Insurance Company (Aetna) and UBS Realty Investors LLC (UBS Realty) Located in Hartford, CT

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by Aetna, including the Aetna general account and the general accounts of Aetna's affiliates which are insurance companies licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which both Aetna and UBS Realty are fiduciaries. Aetna and UBS Realty (pursuant to the arrangement described herein) are primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts. Aetna has hired UBS Realty as a discretionary sub-adviser for the ERISA-Covered Accounts maintained by Aetna. UBS Realty will perform such services for the Accounts as of the transition effective date (expected to be October 1, 2003). However, Aetna will retain fiduciary authority over the ERISA-Covered Accounts after such date.

DATES: Written comments and requests for a public hearing must be received by the Department on or before November 28, 2003.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent of the Office of Exemption Determinations, Employee

Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11167 (Aetna and UBS Realty). The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the 2 pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Aetna and UBS Realty pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Summary of Facts and Representations

1. Aetna is an insurance company organized under the laws of Connecticut. Among the many insurance products and financial services Aetna offers are funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. Historically, Aetna had been significantly involved in managing real estate investments (both real estate mortgage loans and real estate equity interests) held both in its general account for its own benefit as well as in various accounts for the benefit of its investment clients. In connection with this real estate management business, Aetna obtained an exemption—Prohibited Transaction Exemption 91–10 (''PTE 91–10'') [1]—from the Department in 1991 that provided exemptive relief for certain transactions involving the real estate investments in such accounts. For the reasons set forth below, Aetna and UBS Realty have jointly requested that this exemptive relief be modified to reflect certain changed circumstances. If the proposed exemption is granted, PTE 91–10 shall be superseded and replaced by the restated prohibited transaction exemption set forth in this notice.

2. Aetna effectively disposed of a substantial portion of its third-party institutional real estate advisory business a number of years ago by selling that business to a newly-created entity owned by several of the employees in its institutional real estate group and certain private equity investors. This entity was subsequently purchased by UBS AG, a leading global financial services concern and the largest bank in Switzerland, and currently operates as UBS Realty, a wholly-owned indirect subsidiary of UBS AG. The former employees of Aetna's institutional real estate group have (subject to normal turnover) continued to manage and operate the business that is now UBS Realty. (Aetna and UBS Realty are sometimes collectively referred to herein as the ''Applicant.'')

3. UBS Realty is an independent organization that is part of one of the largest financial service organizations in the world. UBS Realty represents that it: (i) Is a registered investment adviser under the Investment Advisers Act of 1940; (ii) meets the requirements of a ''qualified professional asset manager'' within the meaning of Prohibited Transaction Class Exemption 84–14; [2] (iii) had net equity, as of December 31, 2002, of approximately $37 million; and (iv) had total assets under management, as of September 30, 2002, of approximately $9.3 billion, of which approximately $5.7 billion was derived from Aetna, as described further below. Significantly, UBS Realty had approximately $3.6 billion of U.S. commercial real estate assets under management as of September 30, 2002, that was independent of its relationship with Aetna. More generally, the entire UBS group of companies had approximately $16.1 billion of real estate assets under management as of June 30, 2002, and approximately $1.5 trillion of total assets under management as of August, 2002.

4. Aetna has retained, and until transitioned to UBS Realty (as described below) will continue to retain, discretionary authority and control over the management of the various real estate accounts maintained by Aetna, including those real estate accounts in which employee benefit plans participate (the ''ERISA-Covered Accounts'') that are structured as pooled or single customer insurance company separate accounts (collectively, the ''Client Accounts''). In connection with its exercise of this discretionary authority and control, Aetna has retained UBS Realty (including its predecessor) to provide non-discretionary advice, recommendations and related services regarding the management of the Client Accounts. The Applicant represents that, consistent with the provisions of PTE 91–10, until day-to-day discretionary management responsibility is transitioned to UBS Realty, all of the Client Accounts have continued to be ''managed'' by Aetna, and the various decisions covered by the exemptions contained in PTE 91–10 have continued to be made by Aetna.

5. It is now anticipated that the day-to-day discretionary management authority with respect to the Accounts will be delegated to UBS Realty, with the approval of the investors having an interest in the Client Accounts. Aetna, however, will continue to manage the real estate assets in its general account and in the general accounts of one or more of its affiliated insurance companies (collectively, the ''General Account'' and together with the Client Accounts, the ''Accounts''). The receipt of the requisite investor approval is expected in the near future with an anticipated effective date of such delegation on or about October 1, 2003. On and after the effective date of the transition (the ''Transition Effective Date''), the Client Accounts will be managed by UBS Realty on a discretionary basis, subject to the investment guidelines applicable to the particular Client Account and the ultimate oversight of Aetna. Accordingly, after the Transition Effective Date, many of the decisions covered by the exemptions contained in PTE 91–10 will be made by UBS Realty rather than by Aetna.

The Client Accounts will nevertheless continue to be maintained by Aetna as insurance company separate accounts holding assets owned by Aetna that, in effect, ''fund'' Aetna's obligations to the holders of the annuity contracts that relate to the Client Accounts. Moreover, as discussed above, UBS's day-to-day management authority will be undertaken pursuant to an investment advisory agreement with Aetna that, among other things, includes UBS Realty's agreement to operate the Client Accounts in accordance with the Act and UBS Realty's acknowledgement of its fiduciary status to the extent that the assets of the Client Accounts are ''plan assets'' subject to the Act. Finally, Aetna will monitor UBS Realty's performance of its responsibilities and retains the right to terminate its delegation to UBS Realty as a result of default by UBS Realty under the investment advisory agreement or if Aetna determines that such action is required to comply with its fiduciary obligations.

6. UBS Realty's general real estate investment strategy is set by its senior

[1] See 56 FR 3273 (January 29, 1991).

[2] See 49 FR 9494 (March 13, 1984)

management. Within these pre-determined parameters, its real estate acquisitions and underwriting professionals seek quality real estate investments for its various accounts. These potential equity investments are evaluated through a team approach. An acquisition specialist heads the team, which includes an asset manager, an attorney, an accountant, an engineer, an economic researcher, and a risk management specialist. Each member of the team must sign off on the investment before it is presented for approval to UBS Realty's Investment Committee. The Investment Committee, which consists of the senior management of UBS Realty, including the chief executive officer, all portfolio managers, the head of acquisitions, asset management, valuation, legal, and the chief financial officer, as well as the asset management region head, must approve all acquisitions in excess of $2,000,000 and sales in excess of $5,000,000. Approval of the investment transaction requires a concurrence of a majority of the members of the Investment Committee voting, and the portfolio manager for the account. In any event, either the chief executive officer or the head of U.S. operations must approve each transaction. Aetna maintains its own committee process to review investment actions taken by the UBS Realty Investment Committee.

7. The Accounts, including the ERISA-Covered Accounts and the General Account, continue to participate in the sharing of certain real estate investments pursuant to PTE 91–10. As of the Transition Effective Date, those shared real estate investments involving the General Account (which were entered into before the Transition Effective date) will continue to be held by both the ERISA-Covered Accounts and the General Account. Accordingly, exemptive relief is requested with respect to those continuing shared investments. After the Transition Effective Date, the General Account will not share in any new real estate investments made by UBS Realty on behalf of the Client Accounts.

8. UBS Realty represents that it has procedures in place that provide a system of fair and equitable allocation of investments to the Accounts. Aetna and UBS Realty do not share investment opportunities with each other. Each Account has written predetermined investment guidelines (such as product mix and geographic diversification standards) which are generally in place over extended periods. However, they may be modified by the Account's portfolio manager if appropriate, in conjunction with the contractholder, if applicable. An investment whose size or other characteristics qualify it for only one Account will be allocated to that Account. An investment whose size and other characteristics qualify it for allocation to more than one Account will be allocated based on a ''rotation'' system. Under this procedure, investments are allocated to the account that has not received an allocation for the longest period of time. Investments of a size exceeding eligible Account capacities may be shared.

9. UBS Realty will seek to make investments in real estate on a shared basis for those Client Accounts that it manages, in the same manner that Aetna made such shared investments pursuant to PTE 91–10. UBS Realty will continue to manage the shared investments in real estate for Client Accounts in the same manner that Aetna managed such investments pursuant to PTE 91–10. UBS Realty represents that an inherent advantage of shared investments in real estate is the opportunity to enhance the diversity of investments available to the Client Accounts and their participating plans. By investing on a shared basis, the Client Accounts can obtain the advantage of interests in a larger number of high quality properties, regardless of cost. Further, shared investments frequently result in substantial savings associated with administrative and start-up costs.

10. The Applicant frequently structures investments as partnerships, in which a third party (usually a real estate developer) participates in a partnership. It may then allocate the interest in such partnership to more than one Account. The Applicant states that partnership investments typically involve several particular features (by virtue of the terms and conditions of their partnership agreements) that may, in the case of shared investments, result in possible violations of section 406(a) or (b) of the Act. Therefore, an exemption for such partnerships is necessary.

11. During the course of holding a real estate investment, certain situations may arise that require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When these investments are shared among more than one of the Accounts, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the Applicant has submitted a framework of proposed safeguards to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

12. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments has been or will be furnished with a written description of the transactions that may occur involving such investments that might raise questions under the conflict of interest prohibitions of the Act with respect to the Applicant's involvement in such transactions and that are the subject of PTE 91–10 or this proposed exemption. This description will discuss the reasons why such conflicts of interest may be present (*i.e.,* because the General Account has been participating in the investment and may benefit from the transaction [3] or because the interests of the various Accounts participating in the investment may be adverse to each other at certain times with respect to the transaction). The description will also disclose the principles and procedures to be used to resolve anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments has received a copy of PTE 91–10, and will receive a copy of this exemption, if granted.

13. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each such new contractholder will be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption, if granted, before the contractholder begins to participate in the ERISA-Covered Account. With respect to contractholders who are already in an ERISA-Covered Account that does not currently share investments but that proposes to participate in the sharing of investments in the future, each such contractholder will be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption, if granted, before the ERISA-Covered Account begins to participate in the sharing of investments.

14. Withdrawals from pooled, open-end Accounts are made, at the written request of the contractholder, at market value, subject to the availability of cash. The Applicant is not obligated to liquidate investments to meet withdrawal requests. If cash available

[3] As noted in Paragraph 7 above, the General Account will not share in any new real estate investments made by UBS Realty on behalf of the Client Accounts after the Transition Effective Date.

for withdrawals is insufficient to meet all the withdrawal requests on any valuation date, available cash is paid to each withdrawing contractholder on a pro rata basis. With respect to pooled closed-end Accounts, the actual cash flow, including amounts received from the sale of investments, is generally paid out to all contractholders on a pro rata basis until all assets of the Account have been liquidated. Prior to liquidation of the Account, contractholders have the right, subject to the Applicant's agreement which cannot be unreasonably withheld, to sell their interests in the Account. For single customer Accounts, the contractholder with respect to wholly-owned properties can cause the Applicant to liquidate the investment or transfer it to a successor investment manager.

15. An independent fiduciary or independent fiduciary committee must be appointed to act on behalf of each ERISA-Covered Account participating in the sharing of investments with respect to certain transactions and decisions contemplated by the proposed exemption. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by the Applicant regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning subsequent transactions that are the subject of this proposed exemption. The independent fiduciary must be informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to an acceptance by the fiduciary of the appointment. The Applicant shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction that is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the holding of such shared real estate investments continues to be in the best interest of the ERISA-Covered Account.[4]

16. The independent fiduciary must be unrelated to Aetna and UBS Realty as well as any of their respective affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of either Aetna or UBS Realty, or be affiliated in any way with either Aetna or UBS Realty or any of their respective affiliates. The independent fiduciary must be either: (1) A business organization that has at least five (5) years of experience with respect to commercial real estate investments; (2) a committee comprised of one or more individuals who each have at least five (5) years of experience with respect to commercial real estate investments; or (3) the sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from either Aetna or UBS Realty and their respective affiliates for that fiscal year exceeds five (5) percent of such person's annual gross income in the aggregate from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five (5) percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include services rendered to the Accounts as independent fiduciary under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may: (i) Acquire any property from, sell any property to, or borrow any funds from, either Aetna or UBS Realty or any of their respective affiliates, or any Account managed by either Aetna or UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an independent fiduciary; or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

17. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by either Aetna or UBS Realty. The independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of a closed-end pooled ERISA-Covered Account, the appropriate plan fiduciary of each participating plan will be required to approve the initial selection of the independent fiduciary proposed by either Aetna or UBS Realty prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of an open-end pooled ERISA-Covered Account, the independent fiduciary or the independent fiduciary committee will be selected initially by either Aetna or UBS Realty. The Applicant represents that because these Client Accounts often include a significant number of plan contractholders, the independent fiduciary will not be approved initially by plan contractholders. The selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such a Client Account within twelve (12) months after the selection has been made.

18. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee.

[4] For example, in the case of an investment shared by the General Account and an ERISA-Covered Account, if the independent fiduciary of the ERISA-Covered Account determined, after its review of the Account's shared investment portfolio and financial information relating thereto, that the ERISA-Covered Account's interest in the shared investment should be disposed of, UBS Realty would be required to carry out the decision of the independent fiduciary. If the portfolio manager of the General Account agreed that its interest in the shared investment should also be disposed of, then the entire shared investment would be sold. If the portfolio manager of the General Account did not agree that its interest in the shared investment should be sold, UBS Realty would first try to sell only the ERISA-Covered Account's interest in the shared investment. However, to the extent that it is not feasible or possible to sell the ERISA-Covered Account's interest alone, the entire shared investment would be sold notwithstanding the non-acquiescence of the General Account.

This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. In the case of any biographical information furnished after the date of this proposed exemption, the information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from either Aetna or UBS Realty or any of their respective affiliates during the preceding year, including pension or other deferred compensation paid to fiduciaries who may be former employees of either Aetna or UBS Realty or any of their respective affiliates, and compensation for any business services performed by the fiduciary or any affiliate for either Aetna or UBS Realty or any of their respective affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve the initial selection of the fiduciary committee and whether to continue such approval each year thereafter.[5]

19. Once an independent fiduciary is appointed, the independent fiduciary will continue to serve subject to an annual nomination by the Applicant and vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary may be removed by a majority vote of the ERISA-Covered Account's contractholders. The Applicant will not have the authority to remove an independent fiduciary during the term of that independent fiduciary. If a vacancy occurs by virtue of the death, resignation or removal of an independent fiduciary, a replacement independent fiduciary will be nominated by either Aetna or UBS Realty and approved by a majority vote of the ERISA-Covered Account's contractholders. Possible replacements may also be nominated by any of the ERISA-Covered Account's contractholders.

20. The independent fiduciary will normally be compensated by the ERISA-Covered Account. However, upon advance notice to the independent fiduciary and the ERISA-Covered Account's contractholders, the Applicant (or the Plan Sponsor in the case of a Single Customer Account) may pay such fees itself. The Applicant will indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of Connecticut and subject to the requirement that such person acted in good faith and in a manner reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the ERISA-Covered Account.

21. The independent fiduciary will record in writing all decisions that are made in such capacity. In addition to the decisions of such independent fiduciary, the rationale and support thereof must also be set forth in writing and maintained by the Applicant pursuant to the recordkeeping requirements outlined in the General Conditions below. An independent fiduciary committee will be required to make its decisions on the basis of a two-thirds majority.

22. The independent fiduciary of each ERISA-Covered Account is required to approve any recommendation by UBS Realty, acting on behalf of the ERISA-Covered Accounts, involving a shared investment. Situations may arise where a conflict of interest may develop and the independent fiduciaries of the ERISA-Covered Accounts may not agree on what the appropriate course of action should be for a proposed transaction. In such cases, UBS Realty, acting on behalf of the ERISA-Covered Accounts, will make recommendations, which may be outlined as alternatives, to the independent fiduciaries regarding the proposed transaction. If an alternative course of action is not found that is acceptable, and the independent fiduciaries of such ERISA-Covered Accounts are in effect stalemated, a procedure has been developed by the Applicant to ensure that a decision can be made.

23. This stalemate procedure is designed to provide a result that is the same as would be followed in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action that will be taken in such cases is the one that does not require an ERISA-Covered Account to invest new money and will not change the terms of an existing agreement or the existing relationship between the Client Accounts. For example, in the case of a proposed modification to a debt investment shared by two ERISA-Covered Accounts, if the independent fiduciaries cannot agree on such modification, no modification will be made. Rather, the terms of the loan agreement, as originally stated, will be carried out. Or, in the case of a partnership interest shared by two ERISA-Covered Accounts, the exercise of a buy-sell provision in the partnership agreement by a co-partner will require the two ERISA-Covered Accounts that share the interest in the partnership to either sell their partnership interest to the co-partner at a stated price, as determined by the partnership agreement, or buy the co-partner's interest at the stated price. If the independent fiduciaries cannot agree on the action to be taken, and no alternative course of action is found to be acceptable, the ERISA-Covered Accounts will be required to sell their interest to the co-partner. This action would be taken because the other (purchase) option would require the expenditure of additional funds by an objecting ERISA-Covered Account.

In addition, situations may arise where an ERISA-Covered Account and a non-ERISA-Covered Client Account wish to pursue different courses of action. In such situations the decision on behalf of the non-ERISA-Covered Client Account will be made by persons independent of Aetna, UBS Realty and any of their respective affiliates.[6]

Specific Transactions

I. Direct Real Estate Investments

(a) Transfers Between Accounts

24. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the ''selling'' Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved

[5] The Applicant represents that the contractholders in its single customer and pooled closed-end real estate Client Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

[6] In this regard, the Applicant represents that persons independent of Aetna, UBS Realty and any of their respective affiliates will make the decisions on behalf of non-ERISA-Covered Client Accounts pursuant to Section I(e)(2) and Sections II (b)(2) and (c)(2) (d)(2) of the proposed exemption.

in the transaction. Where two or more Accounts are involved in such a transfer, the transfer would also be subject to the approval of the Connecticut Insurance Department. In addition, the Applicant has determined that no such transfers will be permitted between the General Account and an ERISA-Covered Account. Because the Applicant would be acting on behalf of both the ''buying'' and ''selling'' Accounts in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406 of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Client Account of which either Aetna or UBS Realty is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer. See Section I(a).

(b) Joint Sales of Property

25. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined that the sale is desirable for all of the participating Accounts. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[7] Similarly, the Applicant may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. See Section I(b).

(c) Additional Capital Contributions

26. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;[8] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the ERISA-Covered Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that ERISA-Covered Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[9] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Client Account are involved. Accordingly, the Applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment. Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the ERISA-Covered Account's pro rata share of additional capital, less than or more than the ERISA-Covered Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds To Meet Additional Capital Requirements

27. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

28. The Applicant occasionally makes real estate investments consisting of interim construction loans or medium or long-term mortgage loans on a property. In some instances, the Applicant may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of the Applicant. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) A material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the terms of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided by others, and the provision of additional financing to the borrower by the Applicant. These situations require a decision on behalf of the lender as to

[7] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[8] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always contribute at least its pro rata share of such capital.

[9] In the case of shared real estate investments owned entirely by Aetna, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since UBS Realty manages each of the Client Accounts (while the General Account is managed by Aetna), the action the Applicant decides to take for the particular Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit the Applicant on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan, or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts, or with respect to the acquisition of additional debt. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account and the Applicant or the client for each non-ERISA-Covered Client Account. If there is an agreement among the independent fiduciaries and the non-ERISA-Covered Client Accounts as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries and the non-ERISA-Covered Client Accounts, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. With respect to shared debt investments involving ERISA-Covered Accounts and non-ERISA-Covered Client Accounts, decisions on behalf of the non-ERISA-Covered Accounts will be made by persons independent of Aetna, UBS Realty and any of their respective affiliates. See Section I(e).

II. Partnership Investments

29. Many real estate investments are structured as partnership arrangements (rather than 100 percent ownership interest in property) in which the Applicant and another party, such as a real estate developer or manager, participate as co-partners. Generally, the Applicant's co-partner acts as managing partner of the joint venture. The Applicant, in turn, may allocate its interest in the partnership to more than one Account. Partnership investments typically involve several particular features by virtue of the terms and conditions of the partnership agreements that may, when the partnership interest is shared, result in possible violations of section 406 of the Act.

(a) Additional Capital Contributions to Joint Ventures

30. As in the case of investments made entirely by Aetna, partnership real estate investments sometimes require additional operating capital. Typically, the partnership agreements entered into by Aetna and many other real estate investors provide for a capital call by the general partner of the partnership to be made to each partner and that each partner provide the needed capital on a pro rata basis either in the form of an equity contribution or a loan to the partnership. If one partner refuses to contribute its pro rata equity share of the capital call, the other partner(s) may contribute additional capital to cover the short-fall and thereby ''squeeze down'' the interest in the venture of the non-contributing partner.[10] Alternatively, if sufficient additional capital is not provided by the partners, other financing may be sought or the partnership may be liquidated. In the case of a capital call where Aetna's partnership interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the partnership. The general rule that the Applicant will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the ERISA-Covered Account. In addition to situations where some Accounts participating in the ownership of Aetna's partnership interest may not be in a position to provide their share of a capital call, other situations may arise where a partner is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act. See Section II(a).

31. *Aetna Shortfall.* In situations where the General Account and an ERISA-Covered Account are sharing an investment in a partnership, the General Account and an ERISA-Covered Account may experience a capital call from the general partner of the partnership for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[11] the General Account may make an additional equity contribution to the partnership to cover the ERISA-Covered Account's shortfall. However, in any case where the General Account contributes an ERISA-Covered Account's shortfall, the ERISA-Covered Account's share of the partnership interest will be readjusted and reduced based upon the change in the fair market value of the partnership interest held by Aetna which is caused by the infusion of new capital, thus recognizing any appreciation in the investment. There is no ''capital basis squeeze down'' effect under these circumstances as there might be under the partnership agreement should Aetna (in its role as a partner) fail to meet a

[10] In the case of a call for additional capital involving a typical partnership arrangement entered into between parties dealing at arm's-length, the partnership agreement may commonly provide that the equity interest of any non-contributing partner be re-adjusted, or ''squeezed down,'' on a capital interest basis. This involves re-adjusting the equity interests of the partners solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This ''capital interest'' adjustment can substantially diminish the equity interest of the non-contributing partner in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all partners to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other partners.

[11] In any case where the General Account and one or more ERISA-Covered Accounts share Aetna's interest in a partnership, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account (but not higher than the General Account's pro rata share of the required additional capital except, as described in paragraph 30, in the event of a co-venturer shortfall). Thus, as between the Accounts, the General Account will never be the cause of a capital contribution shortfall by Aetna that would result in a capital basis squeeze down by a partner.

call for additional capital. See Section II(a)(1).

Additionally, the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, this proposed exemption would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In this way, the needed capital may be provided without causing a ''squeeze down'' in the equity interest of the participating ERISA-Covered Account. A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered Account and a non-ERISA-Covered Client Account participate in a partnership investment. If one Client Account is unable or unwilling to provide its proportionate share of a capital call, the other Client Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Client Accounts. Thus, any of these disproportionate contribution situations between Client Accounts might result in a violation of section 406(b)(2) of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides limited relief for these disproportionate contributions.

32. *Co-Partner Shortfall.* In some cases, Aetna's partner in a partnership investment may be unable to meet its additional capital obligation, and the Applicant may deem it advisable for some or all of the participating Accounts to contribute capital in excess of their pro rata share in the partnership in order to finance the operation of the property (and thereby squeeze down the equity interest of the partner).[12] The Applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts on a non-proportionate basis if the need arises. Any instance involving the infusion of additional capital to a partnership will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a partner on the basis provided in the partnership agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) Third Party Purchase of Partnership Properties

33. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if an offer is received from a third party to purchase the assets of the partnership, and one partner (irrespective of the percentage ownership interest of the partner) wishes to accept the offer, the other partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the partnership. For example, if Aetna on behalf of the Accounts and a real estate developer are partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, the Applicant on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the partnership. When the Applicant's interest in a real estate partnership is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the partner, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The partnership agreements typically require, however, that Aetna on behalf of the Accounts provide its co-partner with a buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, the Applicant might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able itself to buy-out not only the co-partner, but also the other participating Account(s) that wishes to accept the third party offer to sell. The General Account, however, will not participate in the buy-out of another Account(s). Or, one Account may itself be willing and able to buy-out the co-partner while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. When an ERISA-Covered Account is involved, such potentially desirable alternatives may also raise questions under section 406 of the Act (whether or not the General Account is a participant in the investment). Accordingly, the Applicant is requesting exemptive relief that would permit the Applicant to respond to third-party property purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a partner by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-partner) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account. Further, in any case involving the sharing of a partnership interest between the General Account and an ERISA-Covered Account, the Applicant has determined that the action taken by the General Account in such third-party purchase offer situations will not be inconsistent with the action approved for the ERISA-Covered Account by the independent fiduciary for such Account. For example, where the Applicant recommends that a third-party purchase offer be accepted and the independent fiduciary nevertheless determines that the interest of the co-partner should be bought out, both Accounts will buy out the interest of the co-partner on a proportionate basis, unless a disproportionate buy-out is agreeable to both the Applicant and the independent fiduciary. However, where an offer to sell is acceptable to the co-partner (and the Applicant has the option of selling

[12] In any case involving a shared partnership interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital the General Account would also contribute at least its pro rata share of such capital.

to the third party or buying out the co-partner) and it is determined that the General Account is willing and able alone to buy out the co-partner's interest, the independent fiduciary may elect that the ERISA-Covered Account retain its existing ownership interest. In such case, the General Account may buy out the co-partner pursuant to Section II(b)(1). In any case in which more than one ERISA-Covered Account participates in a shared partnership investment and there is a lack of agreement among the independent fiduciaries with respect to whether to accept a ''sell'' offer or to buy-out a co-partner, the Applicant, as indicated above, must nevertheless provide a unified response to the co-partner on behalf of all participating Accounts. Accordingly, in these instances, all participating Accounts will be required to accept the ''sell'' offer, unless the Account or Accounts that prefer the buy-out can buy-out both the co-partner's and the ''selling'' Account's interest, or unless one Account elects to retain its original ownership interest while the other Account(s) alone buys out the co-partner's interest. The Applicant represents that this action is preferred because the purchase option would require the expenditure of additional funds by an objecting Account.[13] See Section II(b).

(c) Rights of First Refusal in Partnership Agreements

34. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if a partner wishes to sell its interest in the partnership to a third party, the other partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Aetna and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Aetna would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate partnerships, the decision by the Applicant on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the partnership agreement, only one option (exercise or not exercise) may be chosen by the Applicant on behalf of the Accounts, exemptive relief is being requested that would permit the Applicant to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a partnership investment, even though Aetna may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other partner's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Client Accounts participate in a shared partnership interest and agreement cannot be reached on behalf of the Client Accounts on whether to exercise a right of first refusal, the right will not be exercised and the partner will be permitted to sell its interest to the third party, unless one Client Account decides to buy-out the partner alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-partner without other participating Accounts taking part in the transaction. For example, in the case of a shared partnership investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-partner wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the Client Account participate in purchasing that partner's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Partnership Agreements

35. Certain partnership agreements entered into by Aetna may provide that one partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the partnership agreement or buy out the interest of the first partner at such price. If the other partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These ''buy-sell'' provisions are generally used to resolve serious difficulties or impasses in the operation of a partnership, but generally a partnership agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by the Applicant on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-partner, may affect various participating Accounts differently. Accordingly, any decision made by the Applicant in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The Applicant is requesting exemptive relief that would permit the Applicant to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-partner or to react to a buy-sell offer from a co-partner. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment. Further, under the requested exemption, if the Applicant decides to exercise (*i.e.*, initiate) a buy-sell option with respect to the co-partner's interest and the independent fiduciary of a participating ERISA-Covered Account objects, the buy-sell option will not be exercised. Similarly, if the buy-sell option is initiated by the co-partner and there is a split among the independent fiduciaries of participating ERISA-Covered Accounts with respect to whether to buy or sell, all such Accounts will be required to sell, unless the Account(s) that wishes to buy-out the co-partner (or the co-partner and the other participating Account) can do so without the participation of the other Accounts. Also, where a buy-sell option is initiated by the co-partner and Aetna determines that the General Account should purchase the co-partner's interest, if the independent fiduciary of a participating ERISA-Covered Account determines that, as between ''buy'' or ''sell'', such Account's interest should be sold, Aetna's entire partnership interest will be sold unless the independent fiduciary agrees that it would be preferable for the ERISA-Covered Account to retain its share of the partnership interest and Aetna determines that the General Account is willing and able to purchase the entire interest of the co-partner. Any such disproportionate purchases may,

[13] Similarly, in any case involving an ERISA-Covered Account and a non-ERISA-Covered Client Account, if there is a lack of agreement between the independent fiduciary and, for example, the trustees of a foreign or public plan (or the Applicant in the case of a discretionary non-ERISA-Covered Account), all participating Accounts will be required to accept the ''sell'' offer unless an alternative accommodation as described above is made.

however, also raise questions under section 406 of the Act. See Section II(d).

(e) Transactions With Partnership Party in Interest.

36. The Applicant represents that when the General Account holds a 50 percent or more interest in a partnership, the partnership itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the partnership and an ERISA-Covered Account that is also participating in the partnership (*e.g.,* an additional contribution of capital) may be deemed to be a transaction between the plans participating in such ERISA-Covered Account and a party in interest (the partnership itself) in violation of section 406. Also, as a result of the partnership becoming a party in interest under section 3(14)(G) of the Act, other partners in the partnership having a ten percent or more interest may be parties in interest under section 3(14)(I). Therefore, transactions such as buy-outs, sales of property, leases, etc., may occur that involve possible violations of section 406. Accordingly, the Applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) Any additional equity or debt capital contributions to a partnership by an ERISA-Covered Account that is participating in an interest in the partnership, where the partnership is a party in interest solely by reason of the General Account's ownership of a 50 percent or more interest in such partnership; (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender; or (3) other transactions with the co-partners that arise in connection with the operation of the partnership. Any such action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. In addition, the transactions would be conducted on a totally arm's-length basis, and the party in interest involved would have no power or authority to influence any of the transactions engaged in by the Applicant on behalf of any of the Accounts managed by the Applicant. See Section III.

Approvals and Disclosures Pursuant to PTE 91–10

1. Because the proposed exemption in this notice is a modification and replacement of an existing exemption (PTE 91–10), any approvals, appointments, disclosures and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect with respect to this replacement exemption. Accordingly, the Applicant is not required to seek or request any such additional approvals, appointments or decisions or make any additional disclosures (except as provided in paragraphs 12 and 13 hereof) by virtue of this proposed exemption. See Section IV(j).

Initial Proportionate Allocations

The Applicant has not requested exemptive relief for the initial allocation of shared real estate investments by Aetna among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts does not result in per se prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.[14]

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of employee benefit plans investing in ERISA-Covered Accounts that would be affected by the transition of Accounts from Aetna to UBS Realty. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Aetna or UBS Realty, of the notice of proposed exemption, as published in the **Federal Register**, to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**. The information provided will include a notice to interested persons of their right to comment or request a public hearing, as described in 29 CFR 2570.43(b).

In addition, Aetna or UBS Realty will provide copies of the proposed exemption, upon request, to other interested persons, including plan fiduciaries that may invest in ERISA-Covered Accounts in the future during this period.

Written comments and/or requests of a hearing must be made within sixty (60) days of the date of publication of this notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

[14] See preamble to the Proposed Exemption for Aetna, 55 FR 45671, at 45678 (October 30, 1990).

Proposed Exemption

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend and replace Prohibited Transaction Exemption 91–10, 56 FR 3273 (January 29, 1991), with the following exemption.

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution (or the failure to make such additional contribution) by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts:

(1) The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower.

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of one or more ERISA-Covered Accounts: (A) Not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one of such Accounts has approved such modification or has not approved the exercise of such rights; and

(3) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined Section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interest of the Accounts in the shared partnership investment on the basis of the fair market value of such interests subsequent to such contributions; provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate

additional equity capital contributions (or the failure to make such additional contributions) to the partnership by Accounts other than the General Account which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the partnership on the basis of the fair market value of such partnership interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-partner fails to provide all or any part of its proportionate share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the making of Disproportionate additional equity capital contributions to the partnership by an Account up to the amount of such contribution not provided by the co-partner which result in an adjustment in the equity ownership interests of the Accounts in the partnership on the basis provided in the partnership agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the partnership, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the partnership even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved the acceptance of the offer where all of the Accounts (other than the General Account) participating in such investment are not in agreement on how to proceed with respect to such offer, provided that the declining Account[s] are first afforded the opportunity to buy out both the co-partner and ''selling'' Account's interests in the partnership.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a partnership agreement to purchase a co-partner's interest in the partnership at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of the ERISA-Covered Accounts not to exercise such a right of first refusal even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved the exercise of the right of first refusal where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to such right of first refusal, provided that the Accounts that approved the exercise of the right of first refusal are offered the opportunity to buy-out the co-partner on their own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved such sale where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option, provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Aetna, UBS Realty and their respective affiliates. This condition shall not apply to plans covering employees of Aetna, UBS Realty or any of their respective affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption if granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either:

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna, UBS Realty or any of their respective affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, UBS Realty, any of their respective affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to a Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Aetna, UBS Realty, any of their respective affiliates, or any Account managed by Aetna, UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Aetna, UBS Realty or any of their respective affiliates for each of the transactions in this proposed exemption. Aetna, UBS Realty and any of their respective affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Neither UBS Realty nor any of its affiliates is a co-investor in the shared investment or partnership to which an exemption provided by Sections I, II or III above is being applied; provided, however, that this condition shall not preclude an employee benefit plan maintained by Aetna, UBS Realty or any of their affiliates from participating in an ERISA-Covered Account that is such a co-investor.

(h) Aetna or UBS Realty maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna, UBS Realty or any of their respective affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i) Except as provided in paragraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (h) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (i) shall be authorized to examine trade secrets of Aetna, UBS Realty or any of their respective affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this proposed exemption:

(a) An ''affiliate'' of Aetna or UBS Realty, respectivley, includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna or UBS Realty, respectivley,

(2) Any officer, director or employee of Aetna, UBS Realty or any person described in section V(a)(1), and

(3) Any partnership in which Aetna or UBS Realty is a partner.

(b) An ''Account'' means any account maintained by Aetna and, except in the case of the General Account, managed by UBS Realty. The term ''Account'' includes the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The ''General Account'' means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An ''ERISA-Covered Account'' means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) ''Disproportionate'' means not in proportion to an Account's existing equity ownership interest in an investment, partnership or partnership interest in a debt.

(f) The ''Transition Effective Date'' is the effective date of the delegation by Aetna to UBS Realty of the management

of the Accounts, which has been designated as October 1, 2003.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of October 1, 2003, the Transition Effective Date.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number.)

Signed at Washington, DC, this 24th day of September, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–24594 Filed 9–26–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11136, et al.]

Proposed Exemptions; The National Electrical Benefit Fund (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffitt.betty@dol.gov'',* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The National Electrical Benefit Fund (the Plan) Located in Rockville, Maryland

[Application No. D–11136].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply effective October 17, 2002 to Bank of America, N.A. (the Bank) providing a guaranty of repayment for the benefit of the bondholders in the form of an Irrevocable Direct Draw Letter of Credit No. 3051512 (Letter of Credit) and the Partnership's subsequent reimbursement to the Bank of amounts advanced by the Bank pursuant to the Letter of Credit in connection with the investment by the Plan in Colma Apartment Associates, L.P. (the Partnership), provided that the following conditions are met:

(a) The Plan's investment in the Partnership is on terms no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties;

(b) The decisions on behalf of the Plan to invest in the Partnership and consent to the terms of the reimbursement agreement in favor of the Bank are made by fiduciaries, which are not included among, and are independent of and unaffiliated with, the Bank;

(c) The investment in the Partnership represents no more than .5% of the total assets of the Plan; and

(d) The general partners of the Partnership are independent of the Plan and of the Bank of America.

(e) The Plan shall have no obligation to fund its capital contribution unless and until (i) all conditions imposed by the construction lender regarding disbursement to the Partnership of $25,950,000 of the tax-exempt bond construction financing proceeds have been satisfied by the Partnership; and (ii) the Department grants the proposed exemption; and

(f) The Plan's capital contribution will be used solely for the purpose of reimbursing Bank of America for the draw on the Letter of Credit.

Effective Date of Exemption: The effective date of this exemption is October 17, 2002.

Summary of Facts and Representations

1. The Plan is a multiemployer defined benefit plan covering approximately 491,520 participants and beneficiaries. The fair market value of the total assets of the Plan was over $9,700,000,000 as of December 31, 2001. The transaction that is the subject of this proposed exemption involves less than .08% of the fair market value of the total assets of the Plan.

2. The fiduciaries generally responsible for investment decisions in real estate matters on behalf of the Plan are the Trustees, John M. Grau and Jeremiah J. O'Connor (the Trustees). The Trustees were responsible for reviewing and authorizing the investment in the transaction, as detailed below. In addition, the Plan utilizes an independent outside fiduciary, CS Capital Management, Inc., to review and make recommendations regarding real estate transactions.

3. The Plan has become a limited partner in the Partnership which is leasing 2.18 acres of land (the Land) located in San Mateo County, California on which four (4) five-story apartment buildings with retail space and related improvements (the Improvements) are proposed to be built. (The Land and the Improvements are referred to collectively herein as the Project). The Project will have approximately 153 rental units, with 31 of these units (or 20%) being set aside for lower income residents. The Land is owned by San Mateo Transit District, a San Mateo County governmental agency, and is leased to the Partnership under a long term ground lease. The investment proposal involves the Partnership's continued lease of the Land and the construction of the Improvements. Because the Project will provide low income housing, the Partnership is eligible for a grant from San Mateo County and for favorable interest rates on construction and long-term financing. Some of the construction financing, which will be derived from the issuance of tax-exempt and taxable bonds, has been guaranteed, through credit enhancement and liquidity support, by a financial institution that is a party in interest to the Plan. It is the arrangement with respect to the redemption of the taxable bonds that is the subject of the proposed exemption.

4. The Partnership was formed by JSM Enterprises Inc., a commercial real estate developer based in San Jose, California (the Developer), pursuant to the laws of the State of Delaware for the sole purpose of leasing the Land and developing and operating the Project. At this time, the sole limited partner of the Partnership is the Plan. There are two general partners of the Partnership, Colma BART Investors, L.P. (the Co-General Partner) and Affordable Housing Access, Inc. (the Managing General Partner). (The Co-General Partner and the Managing General Partner (the General Partners) are, together with the Plan, sometimes referred to collectively herein as the Partners).

5. The Project has a budget for construction of approximately $36,373,000. Of these costs, $25,950,000 (or 71.3% of the total project budget costs) will be funded in the form of tax-exempt bond construction financing (the Tax-Exempt Bond Financing) from the sale of tax-exempt, multi-family housing revenue, variable rate bonds (the Tax-Exempt Bonds) issued by the ABAG Finance Authority for Nonprofit Corporations (the Issuer), which is a State of California governmental entity (the proceeds of the Tax-Exempt Bond Financing would then be disbursed to the Partnership in the form of a construction loan which will convert into long-term financing). An additional $589,000 of these costs (or 1.6% of the total project budget costs) will be funded from interest expected to be earned on the bond proceeds from the deposit of such proceeds into a guaranteed investment contract, and $630,000 of these costs (or 1.7%) will be funded from income projected to be earned by the Project during the lease-up period. An additional $310,000 (or .9% of the total project budget costs) will be funded by a grant from San Mateo County.

6. The remaining $8,894,000 in project budget costs, $1,779,000 (or 4.9% of the total project budget costs) will be funded by the Co-General Partners' capital contribution to the Partnership and $7,115,000 (or 19.6% of the total project budget costs) will be funded by the Plan's capital contribution to the Partnership. The closing of the Co-General Partners' capital contribution occurred substantially simultaneously with the closing of the Tax-Exempt Bond Financing. As to the ''timing'' of the funding of the Plan's capital contribution, the parties have agreed that the Plan will not be obligated to make its capital contribution until both the Co-General Partners' capital contribution and the Tax-Exempt Bond Financing proceeds have been fully funded for project budget costs, which is expected to occur approximately fifteen (15) months from the date of the closing, or January 2004.

It is contemplated that additional construction financing will come from the proceeds of taxable bonds in the amount of $7,115,000 (*i.e.*, an amount identical to the amount of the Fund's capital contribution) which is issued by the Issuer (the Taxable Bonds) and loaned to the Partnership in the form of a construction loan.

7. In order to achieve a favorable rating for the Taxable Bonds, the Bank, a party in interest to the Plan, has provided a guaranty of repayment for the benefit of the bondholders in the form of a Letter of Credit, dated October 17, 2002. The Bank is a national banking association engaged in consumer banking, commercial banking and trust business and offers a wide range of banking services. The services provided by the Bank to the Plan are limited to those associated with a checking and depository account held by the Plan in connection with the distribution of benefit payments to the Plan's participants and beneficiaries. The Bank primarily provides services to the Plan by acting as the drawee with respect to checks issued by the Plan for certain benefit and other payments made by the Plan, by acting as the originating bank with respect to payments transmitted through the Automated Clearinghouse network, and by providing general depository account services with respect to these payments, such as full reconciliation of the Plan's account.

In addition, a few local branches of the Bank provide depository services for accounts established by local collection agents utilized by the Plan for the purpose of collecting contributions from local employers. In this regard, the Plan utilizes approximately 115 collection agents around the country, each of which is responsible for collecting contributions from covered employers who work in its jurisdiction and for depositing those contributions with a local bank into an account held in the Plan's name. On a regular basis, the Plan sweeps the accounts held by these banks of all the contributions that have been accumulated. A few local collection agents may use the Bank.

The Letter of Credit will be issued pursuant to a Reimbursement Agreement, dated as of October 1, 2002, by and between the Borrower and the Bank (the Reimbursement Agreement), which obligates the Partnership, among other things, to reimburse the Bank for funds advanced by the Bank under the Letter of Credit.

The proceeds of the Taxable Bonds have been deposited with Wells Fargo Bank (the Bond Trustee) pursuant to a Trust Indenture, dated as of October 1, 2002, by and between the Issuer and Wells Fargo Bank, National Association, as trustee (Indenture Agreement).

Assuming that this proposed exemption is granted, the Taxable Bond proceeds would be released by the Bond Trustee and used by the Partnership to help finance a portion of the costs of the construction of the Project. During the duration of the Letter of Credit, the Bond Trustee would make timely payments of draws against the Taxable Bonds. As a condition to the conversion of the Tax-Exempt Bond Financing to long-term financing upon the Project's achievement of certain leasing criteria, the Taxable Bonds (which will not convert into long-term financing) will be fully redeemed by Bank of America pursuant to the Letter of Credit, and the Plan would become obligated to fund its $7,115,000 capital contribution to the Partnership. The Partnership would then use the Plan's capital contribution to reimburse Bank of America for the draw on the Letter of Credit. The Plan's capital contribution will be used by the Partnership for the exclusive purpose of reimbursing Bank of America for the draw on the Letter of Credit.

8. The Plan desires to participate in the Project as it is expected to earn an attractive investment and it fits well within the Plan's investment objectives. With respect to the issuance of the Taxable Bonds and the ultimate repayment of the bondholders with the Plan's capital contribution, the contemplated arrangement will allow the Partnership to take advantage of over $7 million in construction financing at a very favorable interest rate. Such favorable financing would not be available but for the fact that the Project involves the construction of low income housing units.

If the proposed exemption is not granted, the Partnership will not be able to take advantage of the favorable interest rates available to it as an incentive for constructing low income housing. If this proposed exemption is denied, the proceeds of the Taxable Bonds will be returned by the Bond Trustee from the Indenture Account to the Issuer (together with interest) and neither the Partnership nor the Plan will have any further obligation with respect thereto. The Plan would then fund its $7,115,000 to the Partnership for Project budget costs once the proceeds of the Tax-Exempt Bonds and the Co-General Partners' capital contribution were fully disbursed. This, of course, will result in an overall lower return to the Plan on its investment in the Partnership than if the arrangement with respect to the Taxable Bonds were allowed to proceed.

9. In summary, the applicant states that the transaction has satisfied the statutory criteria of section 408(a) of the Act because: (a) The Plan's investment in the Partnership is on terms no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties; (b) the decisions on behalf of the Plan to invest in the Partnership and consent to the terms of the Reimbursement Agreement in favor of the Bank are made by fiduciaries, which are not included among, and are independent of and unaffiliated with, the Bank; (c) the investment in the Partnership represents no more than 20% of the total assets of the Plan; (d) the general partners of the Partnership are independent of the Plan and of the Bank of America; (e) The Plan shall have no obligation to fund its capital contribution unless and until (i) all conditions imposed by the construction lender regarding disbursement to the Partnership of $25,950,000 of the tax-exempt bond construction financing proceeds have been satisfied by the Partnership; and (ii) the Department grants the proposed exemption; and (f) The Plan's capital contribution will be used solely for the purpose of reimbursing Bank of America for the draw on the Letter of Credit.

Effective Date: This exemption, if granted, is effective as of October 17, 2002.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Bank of America, N.A., Located in Charlotte, North Carolina

[Exemption Application No. D–11147].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of January 1, 2003, to:

(A) the granting to Bank of America, N.A. (Bank), either as an agent (the Agent) for a group of financial institutions (Lender(s)), or as a sole Lender, that will fund a so-called ''credit facility'' (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III (A)), investing in the Fund;

(B) any collateral assignment and pledge by the Fund to the Agent, or to the Bank as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;

(C) the granting by the Fund to the Agent, or to the Bank as sole Lender, of a security interest in a Borrower Collateral Account to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances);[1]

(D) the granting by the Fund to the Agent, or to the Bank as sole Lender, of its right to make calls on Investors for Capital Contributions (Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section III (C)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility;

(E) the execution by a Covered Plan of an agreement (Investor Consent) consenting to the Fund's assignment to the Agent, or to the Bank as sole Lender, of the Fund's right to make Capital Calls, which may contain: (i) An acknowledgment by the Covered Plan of the Fund's assignment to the Agent, or to the Bank as sole Lender, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (ii) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility; (iii) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements; and (iv) an agreement that the Covered Plan will fund Capital

[1] In most cases, all Investors will make Capital Contributions into the Borrower Collateral Account. However, in some cases, investors that are not plans may be directed to make Capital Contributions to the Agent, for the benefit of the Lenders, after an event of default, in some other manner.

Contributions only into the Borrower Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section II are met.

Section II—Conditions

(A) The transaction must be on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(B) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of the Bank (either as sole Lender or Agent), must be made by fiduciaries of the Covered Plan that are not included among, are independent of, and are unaffiliated with, the Lenders (including the Bank) and the Fund;

(C) At the time of the execution of an Investor Consent, a Covered Plan must have assets of not less than $100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code section 414(b)) or members of a group of trades or businesses under common control (within the meaning of Code section 414(c)) (hereafter, referred to as ''members of a controlled group''), whose assets are invested on a commingled basis (*e.g.*, through a master trust), this $100 million threshold will be applied to the aggregate assets of the commingled entity;

(D) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, may be invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (*e.g.*, through a master trust), the five (5) percent limit will be applied to the aggregate assets of the commingled entity;

(E) Neither the Bank nor any Lender has discretionary authority or control with respect to a Covered Plan's investment in the Fund nor renders investment advice (within the meaning of 29 CRF 2510.3–21(c)) with respect to such investment;

(F) Upon request, the Covered Plan fiduciaries must receive from the Bank a copy of this notice of proposed exemption and a copy of the final exemption, if granted. In addition, fiduciaries of Covered Plans will receive a copy of this proposed exemption, as published in the **Federal Register**, for Covered Transactions (as defined in Section III(D) below) that occur during the period from January 1, 2003 until the date of the final exemption, if granted;

(G) The Bank must receive from the Covered Plan fiduciaries a written representation that the conditions set forth above in Section II (B), (C), and (D) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries; and

(H) None of the Covered Transactions shall be part of an arrangement, agreement or understanding, designed to benefit a party in interest with respect to a Covered Plan.

Section III—Definitions

(A) The term ''Covered Plan'' means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in section 3 (3) of the Act, that satisfies the conditions set forth herein in Section II;

(B) The term ''Fund'' means an investment opportunity or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more investors invest, including employee benefit plans or special purpose entities holding ''plan assets'' subject to the Act, as described herein, by making capital contributions in cash to such Fund, pursuant to specific capital commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments;

(C) The terms ''Fund Agreement'' or ''Fund Agreements'' mean the written agreements under which a Fund (as defined above) will be formed (such as a limited partnership agreement, a limited liability company agreement or articles of incorporation, together with ancillary related agreements, such as subscription agreements) that will obligate each investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for Capital Contributions; and

(D) The terms ''Covered Transaction'' or ''Covered Transactions'' mean any combination of transactions described in Section I(A)–(D), in conjunction the Investor Consent described in Section I(E).

Effective Date: This proposed exemption, if granted, will be effective as of January 1, 2003. Such retroactive effective date was requested by the Applicant so that the Bank would be able to close on one or more Credit Facilities during a time period after such date, without the need for obtaining separate individual exemptions for such transactions, prior to the date that this exemption would be granted.

Summary of Facts and Representations

1. Administrative Necessity for Exemption. The Bank is a market leader in arranging and syndicating credit facilities that are secured by capital commitments in investment opportunity and venture capital funds (*i.e.*, a Fund). In the past, the Bank has applied for individual exemptions with respect to transactions that are similar to the transactions described herein.[2]

The Bank anticipates that it will continue to enter into such credit facility transactions. However, rather than continuing to submit individual exemption requests for transactions on a case by case basis, the Bank requests that it be granted a more general exemption which would permit the Bank to engage in a series of transactions without the need for recurring, administrative approvals.

2. Parties to Credit Facilities. The Bank represents that each transaction will consist at a minimum of: (i) One or more Funds; (ii) one or more investors (*i.e.*, the Investors) in the Fund that may be an employee benefit plan subject to the Act; and (iii) a Lender or group of Lenders. In each instance involving a group of Lenders, the Credit Facility will be arranged by the Bank, which will also be the Agent under the Credit Facility.

3. Funds. The borrower under the Credit Facility will be a Fund. A Fund may be a corporation, a limited partnership, a limited liability company, or another business entity authorized by applicable law.

The Fund's underlying assets will not consist of plan assets, and the Bank requests no determination with respect thereto.[3]

[2] For example, see Prohibited Transaction Exemption (PTE) 2001–21, 66 FR 34466 (June 28, 2001); PTE 2000–22, 65 FR 33376 (May 23, 2000); and PTE 2000–10, 65 FR 10826 (February 29, 2000).

[3] The Department notes that 29 CFR 2510.3–101, *et seq.* describes what constitutes assets of a plan with respect to a plan's investment in another entity for purposes of subtitle A, and Parts 1 and 4 of subtitle B, of Title I of the Act, and section 4975 of the Code. However, the Department expresses no opinion in this proposed exemption regarding whether the underlying assets of any Fund, as described herein, would be considered the assets of a plan under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the Fund or for transactions involving the Fund and third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to examine carefully all aspects of the Fund's organization, operation and

Continued

Each Fund will be organized and operated through the Fund's organizing and governing documents (*i.e.*, Fund Agreements, as defined in Section III(c) above) such as a partnership agreement, subscription agreements, and other agreements or documents that govern the rights and responsibilities of each party in the Fund. The Fund will generally target equity or debt real estate investments or non-real estate investments. The investments may include, but will not be limited to, the following:

(i) operating company ventures, both public and private;

(ii) the acquisition and development of office, retail, industrial, multi-family, single family, parking garage, corporate real estate assets, and other types of real estate assets;

(iii) the acquisition of interests in real estate or the acquisition of interests in public or private real estate investment trusts and corporations, limited partnerships and limited liability companies whose primary assets will be commercial real estate; or

(iv) the acquisition of publicly-traded or privately-traded debt or equity securities of issuers whose primary assets are real estate.

Although it is contemplated that the Funds will generally target real estate investments exclusively or in combination with non-real estate investments, some Funds may not target any real estate-related investments.[4]

4. Investors; Covered Plans. The investors in the Fund (Investor(s)) may generally include, but not be limited to, private or public corporations, educational institutions, charitable trusts or foundations, tax-exempt trusts or other tax-exempt organizations, governmental employee benefit plans, insurance company general accounts, private individuals or trusts, and other private or public persons, entities, or associations. Such Investors will include ''plans'' subject to the provisions of the Act and the Code, including Covered Plans. The term ''Covered Plan'' means a ''plan'' that meets the requirements of section II(C) and (D). Any reference to a Covered Plan should be deemed, where appropriate, to include a reference to the Covered Plan's fiduciary, representative, agent or investment vehicle, such as a trust, through which the plan's assets are invested in the Fund. An Investor may invest directly in a Fund or indirectly, such as an investment through a special purpose vehicle, an intermediate limited partnership, an insurance company separate account, or otherwise. In some instances, these entities may contain ''plan assets'' subject to the Act as a result of investments made by Covered Plans. For purposes of this proposed exemption, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund,[5] (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) the fiduciary is not a corporation or partnership in which a person affiliated with the Fund or a Lender, as appropriate, is an officer, director, partner, or employee.

5. Lenders; Agent. In each transaction, the Bank will arrange the Credit Facility. For each Credit Facility, there will be one or more Lenders. The Bank will either be the sole Lender for the Credit Facility or will serve as the administrative agent (*i.e.*, the Agent) under the Credit Facility, acting for the benefit of a group of Lenders that participate in the Credit Facility. In any event, one or more of the Lenders, including the Bank, may be a party in interest with respect to one or more of the Covered Plans invested in the Fund.

6. Credit Facility. The ''Credit Facility'' refers to an arrangement entered into by and among: (i) A Fund or Funds, as borrower(s); (ii) the Bank, as agent or the sole Lender; and/or (iii) the Lenders. Under this arrangement, the Fund may be provided credit through direct or indirect borrowings, letters of credit and similar forms of credit arrangements. Generally, the Fund Agreements will permit the Fund to incur indebtedness (typically, for a term of three to seven years) for the acquisition of investments and for working capital purposes. For purposes of the transactions described herein, such indebtedness will include the Credit Facility. The Credit Facility will allow the Fund to consummate investments quickly without having to finalize the debt/equity structure for an investment or arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Investors and the Fund.

The Fund will be able to use its credit under the Credit Facility by direct or indirect borrowings, by requesting that letters of credit be issued, by other similar forms of credit arrangements, or a combination of any of the foregoing. All Lenders will participate on a pro rata basis with respect to all loans, letters of credit, or other credit arrangements. All loans, letters of credit, and other credit arrangements will be issued to the Fund or an entity in which the Fund owns a direct or indirect interest (Qualified Borrower),[6] and not to any individual Investor. All payments of principal and interest made by the Fund or a Qualified Borrower will be allocated pro rata among all Lenders.

The Credit Facility will have a stated maturity date and, until such time, only interest will be payable on the facility. Generally, at the maturity date, the entire unpaid principal balance of, plus any accrued but unpaid interest on, the debt under the Credit Facility will be due and payable, unless the facility is extended. Whether or not an extension of the facility is requested, the manner of repayment of the debt will be generally a combination of Capital Calls on the Investors, proceeds from mortgage financings, and proceeds from liquidation of investments. The Fund will not typically make a lump-sum Capital Call on the day the debt is due.

investment programs in order to determine whether the requirements of the Department's regulations will be met.

[4] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act will apply to a Covered Plan fiduciary's decision to invest in a Fund. Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular investment strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular investment must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment involved, including the plan's potential exposure to losses and the role a particular investment plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

[5] For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term ''Fund'' shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, *e.g.* a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

[6] The Bank represents that Qualified Borrowers will be entities the indebtedness of which may be guaranteed by the Fund. When extensions of credit are made to a Qualified Borrower, the Fund will provide a guaranty agreement to the Lenders, under the terms of the Credit Facility.

Generally, no Fund will attempt to liquidate all of its properties to pay the Credit Facility without making any Capital Calls.

In most instances, the Credit Facility will be a recourse obligation of the Fund. The recourse obligation of a Covered Plan to the Fund will not exceed the Covered Plan's initial capital commitment. Repayment of the Credit Facility may be secured by, among other things, a security interest in and lien on the Capital Commitments, the right to make Capital Calls, the right to collect and enforce the same, and a collateral account in the name of the Fund, into which Capital Contributions are funded (*i.e.*, the Borrower Collateral Account), or any combination of the foregoing. In the event of a default under the Credit Facility, the Agent will have the right to make Capital Calls on the Investors to the extent of unfunded Capital Commitments and will apply Capital Contributions received from such Capital Calls to any amount due to any Lender under the Credit Facility.

7. Investor Consent. In connection with the Credit Facility, each of the Investors will be required to execute an agreement which may contain:

(i) An acknowledgment by the Investor of the Fund's assignment to the Bank, acting as Agent for the benefit of Lenders or as sole Lender, of the right to make Capital Calls upon the Investors, and to collect and enforce the same;

(ii) An agreement by the Investor to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility;

(iii) A representation that the Investor has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreement; and

(iv) An agreement that the Investor will fund Capital Contributions only into the Borrower Collateral Account.

Prior to obtaining Capital Commitments from the Investors, the Fund may negotiate with the Bank to provide the Credit Facility. With respect to the Fund and its activities, the only direct relationship between an Investor and the Bank or any Lender in connection with a Covered Transaction will be the execution of an Investor Consent. In this regard, the only provision in the Investor Consent which is not merely an acknowledgment of already-existing rights and obligations is the Investor's separate agreement that, in the event of default under the Credit Facility, the Investor will make its Capital Contribution to the Borrower Collateral Account in response to a Capital Call for repayment of the Credit Facility without counterclaim, setoff, or defense. However, the Investor does retain its right to assert any such claim or defense in a separate action. Some Funds may not include such a waiver of defenses to the funding of Capital Contributions by the Investors within the Fund Agreements, in which case the Investor will provide the Agent, or the Bank entity as sole Lender, with a separate document that will simply contain an acknowledgment of such agreement. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, will be exclusively between the Agent (for the benefit of the Lenders) or the Bank (as a sole Lender) and the Fund.

8. Investor Consent Integral to Credit Facility. The Bank represents that the delivery by each Investor of an Investor Consent is integral to the Credit Facility, and the Credit Facility will be an integral part of the Fund's investment program. Prior to, or at the time of, the decision by the fiduciaries of a plan to invest in the Fund, such fiduciaries will be aware that the Fund will have the power to borrow money and enter into a loan agreement under which the Fund may pledge its assets, including the Capital Commitments of the Investors and the right to make Capital Calls (giving the secured party the right, under certain circumstances, to make Capital Calls directly). In addition, the Fund Agreements will provide, or each fiduciary of a plan that becomes a Covered Plan will be notified prior to its decision to invest in the Fund, that each Investor may be required to execute documents that are customary for the type of financing involved in the class of transactions described herein. These documents will include an Investor Consent, pursuant to which the Investor agrees to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility. If a fiduciary of a plan that may become a Covered Plan considers these provisions overly-restrictive, it may decline to invest in the Fund. If the Investors refuse to execute the Investor Consent, the terms of the Credit Facility will be less favorable to the Fund. The result will be an increase in the cost of credit to a Fund. In addition, the Credit Facility may no longer be made available to the Fund by the Lender. Thus, the Credit Facility structure without Investor Consent could result in an increase in the cost of financing the operations of the Fund and reduce the Investors' overall rate of return on their investments.

9. Credit Facility and Investor Consent Do Not Alter Plans' Risks. The Bank represents that the Investor Consent does not alter the Covered Plans' risk of investment in the Fund. If the Credit Facility were not provided, the Investor's Capital Contributions would be required for the Fund to make investments. The Covered Plan's Capital Commitment to the Fund is an unconditional obligation to make Capital Contributions to the Fund upon receipt of a Capital Call. Absent any malfeasance on the part of the Fund that would give rise to a defense in favor of the Covered Plan, the Covered Plan will be required unconditionally to honor a Capital Call from the Fund. The Covered Plan's payment of Capital Contributions upon receipt of a Capital Call alters the Covered Plan's risk of the Fund's malfeasance. Any malfeasance occurring prior to the Capital Call will allow the Covered Plan to raise any defenses arising from the malfeasance and refuse to honor the Capital Call. The payment of Capital Contributions upon receipt of a Capital Call subjects the Covered Plan to greater risk. If the Covered Plan later had a claim based on mismanagement or fraud by the Fund, it could not limit its risk by withholding the Capital Contributions for such investment because they would have already been made in response to earlier Capital Calls. The Covered Plan's recourse would be to sue for damages, for recovery of Capital Contributions, or other remedies.

In lieu of making Capital Calls, the Fund will enter into a Credit Facility with the Bank to obtain financing for its investments and operations. With the liquidity from the Credit Facility, the Fund can defer or forego issuing Capital Calls. Absent the Investor Consent, this reduces the Covered Plan's risk of the Fund's wrongful actions. At the time it executes the Investor Consent, the Plan has committed its capital to the Fund. Although the Covered Plan agrees in the Investor Consent to pay its Capital Commitment in the event of a Capital Call by the Agent, without counterclaim, setoff, or defense, the only circumstances under which a Capital Call to repay the Credit Facility could be required is when advances were made thereunder to the Fund, to make investments which, absent the Credit Facility, would otherwise have been made with Capital Contributions of the Investors. Therefore, the Covered Plan would not otherwise have the opportunity to refuse to honor a Capital Call based on any counterclaim, setoff, or defense, but would have to pursue available remedies to recover against the

Fund. The Covered Plan retains the right to assert any such claim or defense in a separate action. The later repayment of the Credit Facility by making Capital Calls on the Investors permits the Fund to replace the Credit Facility with Capital Contributions. Thus, the Bank states that the Plan is exposed to the same risk whether or not the Fund enters into the Credit Facility.

10. Credit Facility Will Not Generally Affect Right of Plan to Withdraw From Fund. The Bank states that the Fund's provisions concerning assignment of Capital Commitments and covenants to honor Capital Calls unconditionally will generally not affect the ability of an Investor to withdraw from the Fund. Under the Fund Agreements, Investors generally will not be able to withdraw except in limited circumstances. Such circumstances would relate to changes that would cause adverse outcomes to the Investors under applicable law. Although the Credit Facility will typically require notice of any intent to withdraw, it will not prohibit withdrawals. The Credit Facility will be structured so that, in most cases, an allocable portion of the facility will be repaid at the time of any withdrawal or the Investor's interest will be transferred to an entity that meets certain financial or legal requirements.

Under the Fund Agreements, transfers of interests in the Fund by Investors are usually also restricted. Generally, Investors will have the right to transfer their interests only with the consent of the Fund, or only to entities that meet certain financial or legal requirements that will be specified in the Fund Agreements. The Credit Facility typically requires the Fund to agree that no transfer of an Investor's interest will be made without prior written consent of the Agent, except for transfers permitted by the Fund Agreements. This provision is put in place so that the Agent will know the identity of the transferee, and is typically coupled with a requirement that repayment of an allocable portion of the Credit Facility be made in connection with the effectiveness of any transfer.

11. Benefits of Credit Facility and Investor Consent. The Bank represents that, absent the requested exemption, the economic loss resulting to the Covered Plans and their participants and beneficiaries results from the more onerous and expensive financing terms and conditions that would be required, absent the Investor Consent, for those plans to invest in these types of investment ventures. The Bank states that the types of Funds involved in the covered transactions are an important element of a large diversified investment portfolio of a qualified plan. The advantages of investments in real estate and other investments provided through such Funds are numerous, including long-term appreciation, hedges against inflation, and cash flow from operations. However, the Bank states that to minimize the risks involved in real estate investments, investment in a large diversified limited partnership or similar entity has many advantages over direct ownership of real estate properties and other securities, including limited liability with respect to such property. Most diversified real estate and other investment programs are carried out through partnerships or limited liability companies that are substantially similar to the Funds. The $100 million minimum net asset value of a Covered Plan makes it likely the Covered Plans will be sponsored by large businesses and will have relationships with an extensive number of service providers, investment managers, and other entities that are related to financial institutions.

Although the Agent, for the benefit of the Lenders, will receive a pledge of the Capital Commitments of the Investors, the right to make Capital Calls, and the right to collect and enforce the same, in the event of default, the Agent would be required, without the Investor Consent, to foreclose on the collateral in order to effect a Capital Call for repayment of the Credit Facility. The Investor Consent permits the Agent to avoid the delay and expense of foreclosure proceedings, and to make a Capital Call immediately on the Investors for repayment. In addition, when the Fund Agreements themselves do not contain the agreement of the Investors to make Capital Commitments without counterclaim, setoff or defense, the Investor Consent contains such agreement, and permits Lenders to be repaid for amounts that were extended to the Fund prior to the time Capital Contributions are called, without the risk of repayment being challenged or delayed by claims the Investors may have against the Fund. The Bank states that this arrangement keeps the risk of the Fund's investment transactions between the Fund and the Investors.

Thus, if the Credit Facility were not provided, the Investor's Capital Contributions would be required for the Fund to make investments. In such instances, the Investor's capital would be used to make investments, and would be immediately at risk. If the Investor later had a claim based on mismanagement or fraud by the Fund, it could not limit its risk by withholding the Capital Contributions for such investment, since those contributions would have already been made in response to earlier Capital Calls. The Investors' recourse would be to sue for damages, for recovery of Capital Contributions, or other remedies.

The Fund will draw on the Credit Facility in lieu of making Capital Calls to fund investments. The later repayment of the Credit Facility by making Capital Calls on the Investors permits the Fund to replace the Credit Facility with Capital Contributions. Therefore, the Bank represents that the agreement in the Investor Consent to repay the Lenders without counterclaim, setoff or defense keeps the risk of Fund mismanagement or fraud between the Fund and the Investors, where it would be were the Credit Facility not in place.

The Bank represents further that no more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, may be invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (*e.g.*, through a master trust), this five (5) percent limit will be applied to the aggregate assets of the commingled entity.

12. Lender Will Not Be a Fiduciary of the Plan With Respect to Investment in the Fund. The Bank represents that, with respect to each Credit Facility covered by this proposed exemption, no Lender which will participate, including the Bank, will be a fiduciary for any of the Covered Plans in connection with their investment in the Fund. The fiduciaries for Investors that may become Covered Plans will have to satisfy the conditions set forth in Section II(B), (C), and (D) above. In this regard, this proposed exemption requires that the applicable fiduciaries provide a representation to the Bank that includes a statement that the fiduciary responsible for making the investment decision on behalf of the Covered Plan to invest in the Fund will be independent of the Lenders and their affiliates. In addition, neither the Lenders nor any of their affiliates will have any influence, authority or control over such Investor's investment in the Fund. Such letter will demonstrate that the fiduciaries responsible for investment decisions are completely independent of any Lender. Moreover, the Bank states that the independent decision of the fiduciaries of those plans that may become Covered Plans to enter into the transaction, with full knowledge of the Credit Facility and the Investor Consent, will be protective of

the rights of participants and beneficiaries of Covered Plans.

The Bank represents that because the Lenders will be generally large, national and international financial institutions, it is likely that, in any given Credit Facility, one or more Lenders will have a relationship with a Covered Plan making it a party in interest with respect to the Plan. A Lender's status as a party in interest to a Covered Plan may cause a transaction proposed herein to be a prohibited transaction under the Act, even though all relationships between the Covered Plan and the Lender will be unrelated to the transaction and do not involve any conflict of interest or opportunity for improper benefit for the Lender. The Bank states that the affected Covered Plans' fiduciaries will be sophisticated investors represented by sophisticated investment advisors. Thus, all participants and beneficiaries of the affected Covered Plans will be adequately protected with respect to the transactions described herein. Finally, the Bank states that none of the Covered Transactions will be part of an overall arrangement, agreement or understanding designed to benefit a party in interest with respect to a Covered Plan.

13. Summary. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act for the following reasons:

(i) Each transaction will be on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(ii) The decision to invest on behalf of each Covered Plan, and the decision to execute an agreement for consent to the Fund's assignment to the Bank of the Fund's right to make Capital Calls, will be made by fiduciaries of the Covered Plan that are independent of, and unaffiliated with, the Lenders and the Fund;

(iii) At the time of the execution of an Investor Consent, a Covered Plan must have assets of not less than $100 million (other than situations involving multiple plans maintained by the same employer or by members of a controlled group, whose assets are invested on a commingled basis, where this $100 million threshold can be met by aggregating assets of the commingled entity);

(iv) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, will be invested in the Fund (other than in the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis, wherein this five (5) percent limit will be applied to the aggregate assets of all such commingled entities);

(v) Neither the Bank nor any Lender has any fiduciary authority of control with respect to a Covered Plan's investment in a Fund nor renders investment advice within the meaning of 29 CFR 2510.3–21(c);

(vi) The Covered Plan fiduciaries will receive from the Bank, upon request, a copy of this notice of proposed exemption and a copy of the final exemption, if granted. In addition, fiduciaries of Covered Plans will receive a copy of this proposed exemption, as published in the **Federal Register**, for Covered Transactions that occur during the period from January 1, 2003 until the date of the final exemption, if granted; and

(vii) The Bank will receive from the Covered Plan Fiduciaries a written representation that the conditions set forth in Section II(B), (C), and (D) above are satisfied for each transaction with respect to the Covered Plan for which they are fiduciaries.

Notice to Interested Persons: The applicant states, with regard to the Covered Transactions (as defined in Section III (D), above) for which retroactive relief is requested, that fiduciaries of Covered Plans will receive a copy of this proposed exemption, as published in the **Federal Register**, for those Covered Transactions occurring during the period from January 1, 2003 until the date of the final exemption, if granted. In addition, with respect to Covered Transactions occurring in the future, for which prospective relief has been requested, the applicant represents that such fiduciaries will be notified by publication of this notice in the **Federal Register**.

The applicant represents that because potentially interested fiduciaries of employee benefit plans that may invest in a Fund in the future cannot all be identified, the only practical means of notifying such fiduciaries is by the publication of this notice in the **Federal Register**. However, the applicant states that Covered Plan fiduciaries will receive from the Bank a copy of this notice of proposed exemption, upon request, and a copy of the final exemption, if granted.

Comments relating to this notice of proposed exemption must be received by the Department not later than 45 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, at telephone (202) 693–8540. (This is not a toll-free number.)

Lodgian, Inc. 401(k) Plan and Trust Agreement (the Plan) Located in Atlanta, Georgia

[Application No. D–11180]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 3, 2002, to (1) the past acquisition and holding by the Plan of certain warrants (the Warrant(s)) issued by Lodgian, Inc. (Lodgian), a party in interest with respect to the Plan, which would permit the purchase of new common stock (New Lodgian Stock); (2) the cancellation payment (the Cancellation Payment) by Lodgian to the Plan in exchange for the Warrants (i) at the election of active participants (ii) at the election of the terminated vested participants whose vested interests exceed $5,000, or (iii) in accordance with the procedures for the automatic cash out of the value of Warrants held in the accounts of terminated vested participants whose vested interests are $5,000 or less, for an amount that represents the highest value of the Warrants determined by an independent, qualified, appraiser between December 31, 2002 and the date of the individual election; (3) the sale of the Warrants from Plan participants to Lodgian to cash out active and terminated vested participants; and (4) the potential exercise of the Warrants into the New Lodgian Stock, provided that the following conditions were met:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with Lodgian's bankruptcy proceeding (the Bankruptcy);

(b) The Plan had no ability to affect the Plan of Reorganization filed by Lodgian on December 20, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), or the First Amended Plan of Reorganization, subsequently filed under the Bankruptcy Code by Lodgian on November 1, 2002 (The First Amended Plan of Reorganization);

(c) The Warrants were acquired automatically and without any action on the part of the Plan;

(d) The Warrants were acquired by the Plan with the same terms and conditions as non-Plan shareholders;

(e) The Plan did not pay any fees or commissions in connection with the acquisition of the Warrants;

(f) Any decision to cancel the Warrants and accept a Cancellation Payment from Lodgian will be made by the participant in the case of active participants and terminated vested participants whose vested interests exceed $5,000;

(g) The Warrants have been and will continue to be valued annually on the 31st of December by an independent, qualified, appraiser;

(h) With Respect to those Plan participants who cash out the Warrants, the value of the Warrants will be determined by using the highest value determined by an independent, qualified, appraiser between December 31, 2002 and the most recent valuation date prior to the date of the distribution;

(i) An independent fiduciary will monitor the Cancellation Payments, and confirm the valuation of the Warrants;

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is less than the exercise price of the Warrants; and

(k) If the Warrant is listed on an established trading market Lodgian is not required to purchase the Warrant from the Plan.

Effective Date: This exemption, if granted, will be effective as of December 3, 2002.

Summary of Facts and Representations

1. Lodgian is a Delaware corporation maintaining its principal place of business in Atlanta, Georgia. Lodgian is a hotel ownership and management company, and currently operates approximately 97 hotels in the hospitality industry, nearly all of which are located in the United States. On December 20, 2001, Lodgian and 82 of its subsidiaries filed for Chapter 11 Bankruptcy protection. Reasons for the filing included excessive debt and substantial weaknesses in the hotel industry following the events of September 11, 2001. The First Amended Plan of Reorganization (POR) was filed on November 1, 2002 and confirmed by the United States Bankruptcy Court for the Southern District of New York on November 5, 2002. The POR became effective November 25, 2002.

2. As of the date of this filing, Lodgian employs approximately 7,000 employees who are eligible to participate in the Plan upon satisfying the Plan's age and service eligibility requirements. The Plan is a tax qualified defined contribution retirement plan that provides for employee pre-tax contributions under section 401(k) of the Code, and employer matching contributions under Code section 401(m). The Plan was adopted effective as of July 1, 1984 by Servico, Inc. Subsequently, Servico, Inc. and Impac Hotel Group, LLC combined their respective businesses through a series of corporate mergers that resulted in Servico and Impac becoming wholly-owned subsidiaries of Lodgian, Inc. effective as of December 11, 1998. Effective January 1, 1999, Lodgian assumed sponsorship of the Plan and changed the Plan's name to the Lodgian, Inc. 401(k) Plan and Trust Agreement. As of December 31, 2002, the Plan had total assets of approximately $6,363,693 and 1,580 participants, including active and former employees.

The Plan permits participants to direct the investment of their Plan accounts into a variety of investment funds, including, until December 6, 2001, investment in old Lodgian stock (Old Lodgian Stock). Lodgian's matching contributions to the Plan previously were made in the form of shares of Old Lodgian Stock following the end of each plan year. The last contribution in the form of Old Lodgian Stock was made for the 2000 plan year. Matching contributions were required to remain invested in Old Lodgian Stock until December 6, 2001 when participants were permitted to direct that all or a part of the matching contributions be invested in another investment fund offered under the Plan. If a participant's own contributions were invested in Old Lodgian Stock, such investments were always permitted to be liquidated and invested in another Plan investment fund.

3. Daniel E. Ellis, Senior Vice President and General Counsel of Lodgian, also serves as the trustee of the Plan. The administrator of the Plan is Lodgian, which administers the Plan through its Administrative Committee. Lodgian, as the Plan sponsor, selects the investment funds available for participant-directed investments.

4. When the Old Lodgian Stock was cancelled in connection with the effectiveness of the POR on November 25, 2002, shareholders, including the Plan, received one share of the New Lodgian Stock for each 137 shares of Old Logian Stock, along with the Warrants to purchase a share of New Lodgian Stock. The New Lodgian Stock and Warrants were deposited into the Plan's trust on December 3, 2002. For each 1,000 shares of Old Lodgian Stock, a shareholder received the following Warrants:

Type of warrant	Number of warrants	Warrant exercise price per share of New Lodgian Stock	Expiration date of warrant
Class A	8	$18.29	11/25/07
Class B	27	25.44	11/25/09

Under the POR, the Plan received 9,096.0370 Class A Warrants and 28,108.2435 Class B Warrants. The Warrants are not traded on an exchange, and there are no plans for such trading. A total of approximately 7,000,000 shares of New Lodgian Stock are available for issuance to shareholders of which approximately 6,600,000 shares have been issued to date. The Plan held 7,509.169 shares of New Lodgian Stock as of December 31, 2002, which was approximately 0.11% of the approximately 7,000,000 shares of New Lodgian Stock expected to be issued. The Plan's 7,509.169 shares of New Lodgian Common Stock represent approximately 0.39% of the fair market value of the total assets of the Plan on December 31, 2002. As of that date, New Lodgian Stock was held in the individual accounts of 836 participants. Accordingly, as of December 31, 2002, 836 participants have an interest in the Warrant Funds. Currently 754 participants have an interest in the Warrant Funds. Currently, the cash value of Warrants distributed this far to terminated vested participants totals $389.41, ranging in amount from $.02 to $31.52 per participant.

5. Shares of Old Lodgian Stock were traded on the New York Stock Exchange

until trading was suspended on November 26, 2001. Due to Lodgian's filing of the voluntary bankruptcy petition on December 20, 2001, the Old Logian Stock was ''delisted'' from that exchange on December 31, 2001. Subsequent trading took place on the ''over the counter'' market, until November 25, 2002. The New Lodgian Stock was issued in exchange for Old Lodgian Stock, which was cancelled as part of the approved POR on November 25, 2002. Between November 25, 2002 and January 27, 2003, trades of shares of New Lodgian Stock were reported on the ''pink sheets.'' Shares of New Lodgian Stock began trading on the American Stock Exchange on January 28, 2003 under the symbol ''LGN.'' The opening price per share on that date was $5.25. The trading prices have ranged from a high of $5.50 per share on January 28, 2003 (the opening date on the American Stock Exchange) to a low of $2.50 per share. The current trading price is in the range of $3.19 per share.

Effective as of January 1, 2003, the Plan permits participants to defer up to 15% (increased from 10% in prior years) of their eligible compensation subject to other applicable limits in the Code. The Plan was amended and restated to comply with recent tax law changes in December 2002. The amendment and restatement included the creation of two separate funds, Warrant Fund A and Warrant Fund B, to hold the Warrants which are the subject of this exemption application. These two Warrant Funds are ''frozen'' as described in the Plan document, meaning that participants may not invest new amounts in the Warrant Funds or direct a transfer from the Warrant Funds to other Plan investment funds [7]. A Participant whose Plan account included an investment in Old Lodgian Stock on December 3, 2002 (the date the New Lodgian Stock and Warrants were issued to the Plan) received a proportionate interest in the New Lodgian Stock Fund and the frozen Warrant Funds.

6. It is represented that the Warrants do not constitute qualifying employer securities for purposes of section 407(d)(5) of the Act. Lodgian represents that the Warrants held by the Plan would constitute an ''employer security'' within the meaning of 407(d)(1) of the Act but not a ''qualifying employer security'' under section 407(d)(5) of the Act inasmuch as the Warrants do not fall within any of the covered categories.[8]

Therefore, Lodgian requests retroactive exemptive relief from the Department.

7. The decision as to whether to exchange the Warrants before their respective expiration dates for the Cancellation Payment from Lodgian will be made independently by each active participant. Further, terminated vested participants whose interests in the Plan exceed $5,000 will also have the option to exchange the Warrants for the Cancellation Payment.

The applicant represents that the terminated vested participants whose vested interests are $5,000 or less will automatically be cashed out pursuant to the Cancellation Payment and paid their vested interests as soon as administratively possible following their employment termination. In this case, the cash value of any Warrants held in their Plan accounts will be included in the distribution, using the highest value determined by an independent, qualified, appraiser between December 31, 2002 and the most recent valuation date prior to the date of the distribution.

Although the Warrants have been valued by an independent, qualified, appraiser in March, April and May of 2003, in the future, as long as Warrants remain in the Plan, the Warrants will be valued annually on the 31st of December. Pursuant to the Cancellation Payment, active participants and terminated participants who are not automatically cashed out because their vested interests exceed $5,000 will have an ongoing right to elect to cash in their Warrants, and, in the case of terminated vested participants whose vested interests are less than $5,000, these participants will receive cash for the surrendered Warrants based on the highest independent appraisal prior to the cash in. The cash value will be held in the active participant's Plan account for investment direction into another Plan investment option. In the case of the terminated vested participant, the cash value will be included in the distribution of his or her vested interest.

An independent fiduciary will monitor the Cancellation Payments and confirm the valuation of the Warrants.

8. Lodgian's obligation to purchase the Warrants is effective at a time when the New Lodgian Stock price is greater than the Warrant exercise price. When the Warrant exercise price is equal to or less than the fair market value of a share of the New Lodgian Stock, Lodgian will not be required to purchase the Warrant(s) from Plan participants. The Plan participant will be permitted to exercise the Warrant(s) and obtain the New Lodgian Stock by paying the exercise price. The exercise price will be paid from the proceeds of a sale of another Plan investment as directed by the Plan participant. Following the exercise of the Warrant, the participant can retain the New Lodgian Stock or direct a sale of some or all of the New Lodgian Stock shares, with the sales proceeds invested in another Plan investment fund selected by the Plan participant. The determination of whether or not Lodgian is obligated to purchase a Warrant would be made on the basis of the closing stock price of a share of the New Lodgian Stock on the day the Plan participant directs a sale of the Warrant.

If the Warrants are traded on an established market, the Plan participant would be allowed to direct the sale of the Warrants on the market, and Lodgian would not be required to purchase the Warrants. The Plan participant would receive cash proceeds from the sale of the Warrant, and this cash sale would represent a market transaction and would not involve Lodgian.

9. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with Lodgian's Bankruptcy;

(b) The Plan had no ability to affect the Plan of Reorganization filed by Lodgian on December 20, 2001 under the Bankruptcy Code, or the First Amended Plan of Reorganization;

(c) The Warrants were acquired automatically and without any action on the part of the Plan;

(d) The Warrants were acquired by the Plan with the same terms and conditions as non-Plan shareholders;

(e) The Plan did not pay any fees or commissions in connection with the receipt of the Warrants, nor did the Plan pay any fees or commissions in connection with the holding of the Warrants;

(f) Any decision to cancel the Warrants and accept a Cancellation Payment from Lodgian will be made by the Participant in the case of active participants and terminated vested

[7] The Department notes that investment decisions regarding the Warrants are subject to section 404 of the Act. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.

[8] Section 407(d)(1) of the Act defines an ''employer security'' as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. Section 407(d)(5) of the Act defines a ''qualifying employer security'' as an employer security which is (a) stock; (b) a marketable obligation; or (c) an interest in certain publicly-traded partnerships, but only if such partnership is an existing partnership.

participants whose vested interests exceed $5,000;

(g) The Warrants have been and will continue to be valued annually on the 31st of December by an independent, qualified, appraiser;

(h) The value of the Warrants will be determined by using the highest value determined by an independent, qualified, appraiser between December 31, 2002 and the most recent valuation date prior to the date of the distribution; and

(i) An independent fiduciary will monitor the Cancellation Payments, and confirm the valuation of the Warrants;

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is greater than the exercise price of the Warrants; and

(k) If the Warrants are listed on an established trading market, Lodgian is not required to purchase the Warrants from the Plan.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by Lodgian and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 693–8563 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of September, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–24595 Filed 9–26–03; 8:45 am]

BILLING CODE 4510–29–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet to discuss Commission administrative matters on Monday, 20 October, 2003, from 8:30 a.m. to 5 p.m. The Commission will meet in executive session on Tuesday, 21 October, 2003 from 8:30 a.m. to 12 p.m. Sessions of the Commission and the Committee's Annual Meeting related to marine mammal conservation will be held on Tuesday, 21 October, 2003, from 1 p.m. to 5:30 p.m., on Wednesday, 22 October, 2003, from 8:15 a.m. to 5:30 p.m., and on Thursday, 22 October, 2003, from 8:15 a.m. to 1 p.m.

PLACE: The Newport Harbor Hotel and Marina, 49 America's Cup Avenue, Newport, Rhode Island 02840; telephone (401) 847–9000; fax (401) 849–6380.

STATUS: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting are the status of large whales along the U.S. North Atlantic coast, including ongoing and planned research, the Atlantic Large Whale Take Reduction Plan, and ship collisions with North Atlantic right whales; the status of bottlenose dolphins along the U.S. East Coast; issues related to interactions between marine mammals and fisheries; a review of take reduction teams; issues related to strandings of marine mammals; issues related to marine mammal permits; and other matters. A more detailed agenda can be found on the Commission's Web site, *http://www.mmc.gov.*

FOR FURTHER INFORMATION CONTACT: David Cottingham, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, (301) 504–0087.

Dated: September 25, 2003.

David Cottingham,

Executive Director.

[FR Doc. 03–24672 Filed 9–25–03; 10:09 am]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–116)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Regenetech, Inc., of Sugar Land, TX, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,485,963, ''Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof; U.S. Patent No. 5,153,132, entitled ''Three-Dimensional Co-Culture Process;'' U.S. Patent No. 5,153,133, entitled ''Method for Culturing Mammalian Cells in a Horizontally Rotated Bioreactor;'' U.S. Patent No. 5,155,034, entitled ''Three-Dimensional Cell to Tissue Assembly Process;'' U.S. Patent No. 5,155,035, entitled ''Method for Culturing Mammalian Cells in a

Perfused Bioreactor;'' U.S. Patent No. 5,308,764, entitled ''Multi-Cellular Three-Dimensional Living Mammalian Tissue;'' U.S. Patent No. 5,496,722, entitled ''Method for Producing Non-Neoplastic, 3-Dimensional Mammalian Tissue and Cell Aggregates under Microgravity Culture Conditions and the Products Produced Thereby;'' U.S. Patent No. 5,627,021, entitled ''Multi-Cellular, Three-Dimensional Living Mammalian Tissue;'' U.S. Patent No. 5,846,807, entitled ''Media Compositions for Three Dimensional Mammalian Tissue Growth Under Microgravity Culture Conditions;'' U.S. Patent No. 5,858,783, entitled ''Production of Normal Mammalian Organ Culture Using a Medium Containing MemAlpha, Leibovitz L–15, Glucose Galactose Fructose;'' U.S. Patent No. 5,851,816, entitled ''Cultured High-Fidelity Three Dimensional Human Urogenital Tract Carcinomas and Process;'' and U.S. Patent No. 6,117,674, entitled ''Horizontal Rotating-Wall Vessel Propagation in Vitro Human Tissue Models; ''and pending patent application identified as NASA Case No. MSC–22633–2, ''Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof.'' Each of the above U.S. Patents and the patent application are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by October 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: September 23, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–24531 Filed 9–26–03; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 7, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Brittle Books, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

2. *Date:* October 10, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Linguistics, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

3. *Date:* October 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for World Studies, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

4. *Date:* October 17, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Ancient, Medieval, Renaissance Studies, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

5. *Date:* October 22, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Urban History, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

6. *Date:* October 28, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Performing Arts, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

7. *Date:* October 29, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Material Culture, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

8. *Date:* October 31, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Literature, submitted to the Division of Preservation and Access at the July 15, 2003 deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 03–24455 Filed 9–26–03; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978. Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued 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 a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 29, 2003. Permit applications 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 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested: The Foundation issued a permit (ACA #2004–002) to Laurence J. Conrad on June 27, 2003. The issued permit allows the applicant to access several Antarctic Specially Protected Areas of photographing named geographic features and historic huts throughout the McMurdo Sound Area. The photographs will be used to illustrate a geographically arranged gazetteer or ''field guide''.

The applicant requests a modification to his permit to allow access to the Antarctic Specially Protected Area of Cape Crozier, Ross Island (ASPA #124). The applicant was unaware the boundaries of the site had been expanded in the new Management Plan, which now included Wilson's Stone Igloo and the Knoll. The applicant would like to enter the site for the purpose of taking documentary photography from those locations to be used in the gazetteer. They do not plan to venture near the penguin rookery or the skua nesting areas.

Location: Cape Crozier (ASPA #124).

Dates: October 15, 2003 to February 28, 2004.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–24532 Filed 9–26–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 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 October 29, 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 (Pub. L. 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 requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2004–005

1. *Applicant:* Howard Evans, Professor of Veterinary and Comparative Anatomy, Emeritus, College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401.

Activity for Which Permit is Requested: Take and Import into the United States. The applicant proposes to salvage dead specimens of penguins and other seabirds, as well as parts of marine mammals, to be used for educational purposes in his lectures. The applicant will be a lecturer on board a cruise ship visiting the Antarctic Peninsula and may have the opportunity to encounter bird and animal carcasses or parts. Collected items will be imported into the United States and become part of the university collection.

Location: Antarctic Peninsula region.

Dates: December 30, 2003 to January 25, 2004.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–24533 Filed 9–26–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: October 22, 2003; 8 a.m. to 5:30 p.m. (e.s.t.).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Mary Ann Birchett, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; (703) 292–8100.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda: October 22, 2003.

A.M.: Introductions and Updates—Office of Budget, Finance, and Award Management and Office of Information and Resource Management activities.

Presentation and Discussion—Grants Management.

P.M.: Presentation and Discussion—IT Security; NSF Business Analysis; Meeting with NSF Deputy Director; Committee Discussion; Planning for next meeting; feedback; other business.

Dated: September 23, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–24458 Filed 9–26–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Pennsylvania Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company, FirstEnergy Nuclear Operating Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its March 11, 2003, application for proposed amendments to Facility Operating License Nos. DPR–66 and NFP–73 for the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), located in Beaver County, Pennsylvania.

The proposed amendment would have revised the BVPS–1 and 2 Technical Specifications (TSs) to include listing of the Westinghouse best-estimate large-break loss-of-cooling accident (LOCA) methodology in TS 6.9.5, ''Core Operating Limits Report (COLR),'' thereby approving its use in the LOCA accident analysis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 27, 2003 (68 FR 28853). However, by letter dated September 5, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 11, 2003, and the licensee's letter dated September 5, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of September 2003.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24478 Filed 9–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2253]

Removal of the GSA Watertown, MA, Property From the Site Decommissioning Management Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of site release and finding of no significant impact.

I. Introduction

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is releasing the General Services Administration (GSA) Property in Watertown, MA, for unrestricted use and is removing the site from the Site Decommissioning Management Plan (SDMP) list. The site is managed by the U.S. Army Corps of Engineers (USACE), New England District. The property was formerly a part of the Watertown Arsenal used by the U.S. Army for munitions operations. In 1990, the Commission developed the SDMP program for sites that warranted special attention to ensure timely decommissioning. This list included the GSA Watertown site. Since being placed on the SDMP, large amounts of contaminated soil have been removed from the site. The USACE has supplied, and the Commission has reviewed, site characterization and dose assessment information, and the Commission has prepared an Environmental Assessment (EA).

II. EA Summary

The purpose of the proposed action is to release the GSA property in Watertown, MA, for unrestricted use and remove it from the SDMP. The USACE provided a final radiological status survey and performed a site-specific dose analysis to demonstrate the site meets the license termination criteria in subpart E of 10 CFR part 20. In addition, NRC staff conducted independent measurements of residual contamination remaining at the site.

III. Finding of No Significant Impact

The NRC staff has evaluated the USACE request, has reviewed the results of the final radiological survey, has performed confirmatory measurements throughout the site property, and has determined that the unrestricted release dose criteria in 10 CFR 20.1402 have been met. On the basis of the Environmental Assessment, the Commission concludes that the site is suitable for release for unrestricted use, and the GSA Watertown, MA, property is being removed from the SDMP. The staff has prepared the attached EA to support the proposed action. The NRC staff has concluded that the environmental impacts from the decision 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 documents related to the proposed action are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML032601000). These documents are also available for inspection and copying for a fee at the USNRC Region I Office, 475 Allendale Rd., King of Prussia, PA 19406. Any questions with respect to this action should be referred to Craig Z. Gordon, Decommissioning and Laboratory Branch, Division of Nuclear Material Safety, USNRC Region I, 475 Allendale Rd., King of Prussia, Pennsylvania 19406, telephone (610) 337–5216, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania, this 18th day of September, 2003.

For the Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning & Laboratory Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–24476 Filed 9–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29288]

Availability of Environmental Assessment and Finding of No Significant Impact Related to the License Renewal Request of the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, for the Quehanna Site in Karthaus, Pennsylvania

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: James Kottan, Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5214, fax (610) 337–5269 and/or e-mail *jjk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License Number 37–17860–02 issued to the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection (PADEP, BRP) to authorize the decommissioning of the Quehanna Facility located at 115 Reactor Road, Karthaus, Clearfield County, Pennsylvania. In support of this action, the NRC staff has prepared an Environmental Assessment (EA) in accordance with the requirements of 10 CFR part 51.

In a letter dated February 26, 2003, PADEP, BRP submitted a request to renew Byproduct Materials License Number 37–17860–02, including submittal of a revised decommissioning plan (DP), to obtain authorization to decommission the Quehanna Facility. In subsequent letters dated June 4, 2003, and June 18, 2003, PADEP, BRP provided responses to an NRC request for additional information regarding the DP. The request, currently before the NRC, involves removing the hot cell complex and embedded drain lines at the facility and decontaminating the remaining portions of the facility to meet the unrestricted release criteria.

Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. Summary of EA

An EA has been performed to evaluate the environmental impacts of PADEP, BRP's request for NRC's approval for PADEP, and BRP to decommission the Quehanna Facility. In accordance with the conditions currently described in its license, the licensee has been performing remediation of residual radioactivity from internal building equipment and components. The radioactive contamination at PADEP, BRP's Karthaus, Pennsylvania site consists of building and equipment surfaces contaminated with strontium-90 (Sr-90) from licensed operations that occurred from the late 1950s until 1967.

The hot cell complex at this facility will be removed in order to expose the basement below for decontamination and embedded and buried drain lines will be removed. The remaining structures will be decontaminated as necessary to meet the unrestricted release criteria, and left in place. PADEP, BRP plans to use dismantlement and deconstruction techniques, such as cutting and drilling in taking the hot cells down. Coring and drilling equipment, back hoes, and mobile cranes will be used to remove/dismantle and to size reduce concrete or concrete masonry unit (CMU) structures. Steel reinforcement bars will be torch-cut, sheared, or saw-cut as required for dismantlement, leveling, or size reduction purposes. Radioactive waste generated as a result of decommissioning activities will be transported offsite by truck for disposal. PADEP, BRP estimates that approximately 300 cubic yards of radioactive waste will leave the site over the duration of the decommissioning project. The duration of the proposed action will be approximately 1.5 years.

The licensee's February 26, 2003, license renewal request was noticed in the **Federal Register** on August 4, 2003 (68 FR 45859). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

III. Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared the EA, summarized above. On the basis of the EA, the NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment, and, therefore, an environmental impact statement is not required. NRC believes that the approval of the license renewal will not cause any significant impacts on the human environment and is protective of human health. The NRC staff has concluded that exposures to workers will be low and well within the limits specified in 10 CFR part 20. Decommissioning activities as proposed by the renewal will result in a reduction of radioactive material at the PADEP, BRP site in Karthaus, which will reduce the long term potential for release of radiological contamination to the environment. No radiologically contaminated effluents are expected during hot cell dismantlement and deconstruction and decontamination activities. No radiation exposure to any member of the public is expected, and public exposure will therefore also be less than the applicable public exposure limits of 10 CFR part 20.

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* (Accession Number: ML030800038). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

Dated at King of Prussia, Pennsylvania, this 17th day of September, 2003.

For the Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–24475 Filed 9–26–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27723]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 23, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 17, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 17, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy Inc., et al. (70–10100)

Allegheny Energy Inc. (''Allegheny''), a registered holding company, and Allegheny Energy Supply Company LLC

(''AE Supply''), a registered holding company and public utility subsidiary of Allegheny, 10435 Downsville Pike, Hagerstown, Maryland 21740, have filed a post effective amendment (''Application'') to a previous application-declaration under sections 6(a), 7 and 12(c) of the Act and rules 45, 46, and 54 under the Act.

Allegheny and AE Supply (collectively, ''Applicants'') request that the Commission release jurisdiction it reserved in a previous order dated February 21, 2003 (Holding Co. Act Release No. 27652) (''Capitalization Order'') over the authority of AE Supply to issue guarantees. In addition, Applicants request authority for AE Supply's subsidiaries, Allegheny Trading Finance Company (''ATF'') and Allegheny Energy Supply Development Services LLC (''AESDS''), to dividend to AE Supply out of capital up to the full amount of the proceeds of certain asset sales. Applicants state that all of the authority requested in this Application is necessary to implement elements of Applicants' plan for returning to financial health and compliance with Commission standards for registered holding company capital structures.

The Capitalization Order granted for a period through December 31, 2003 (''Modified Authorization Period'') modifications to certain authorizations the Commission granted to the Applicants by order dated December 31, 2001 (Holding Co. Act Release No. 27486 (''Original Financing Order''), as supplemented by orders dated April 17, 2002 (Holding Co. Act Release No. 27521) (''April Order'') and October 17, 2002 (Holding Co. Act Release No. 27579) (''Supplemental Order'' and together with the Original Financing Order and the April Order, ''Financing Order'').

In the Original Financing Order, the Commission authorized, among other things:

(i) Allegheny and/or its subsidiaries, including AE Supply, to enter into guarantees (''Allegheny Guarantees'') with respect to the obligations of its subsidiaries in an aggregate principal amount not to exceed $3 billion (''Aggregate Guarantee Limitation''), based on the amount at risk outstanding at any one time, exclusive of (a) any guarantees or credit support arrangements authorized by the Commission in separate proceedings and (b) any guarantees exempt under rule 45(b); and

(ii) Applicants' subsidiaries, other than their operating companies,[1] (''Other Subsidiaries'') to enter into guarantees from time to time, with respect to the obligations of any of the Other Subsidiaries, as may be appropriate, to enable AE Supply and/or the Other Subsidiaries to carry on their respective businesses in an aggregate principal amount, together with the Allegheny Guarantees, not to exceed the Aggregate Guarantee Limitation, based on the amount at risk outstanding at any one time.

In the Capitalization Order, the Commission modified the financing parameters that are conditions to the financing transactions authorized in the Financing Order, as follows (''Revised Financing Conditions''):

(i) The common equity of Allegheny, on a consolidated basis, will not fall below 28 percent of its total capitalization; and the common equity of AE Supply, on a consolidated basis, will not fall below 20 percent of its total capitalization (''Common Equity Conditions'');

(ii) The effective cost of capital on any security issued by Allegheny or AE Supply will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will (a) the interest rate on any debt securities issued under a bank credit facility exceed the greater of (i) 900 basis points over the comparable term London Interbank Offered Rate[2] or (ii) the sum of 9 percent plus the prime rate as announced by a nationally recognized money center bank, and (b) the interest rate on any debt securities issued to any other financial investor exceed the sum of 12 percent plus the prime rate as announced by a nationally recognized money center bank; and

(iii) The underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security issued by Allegheny or AE Supply will not exceed the greater of (a) 5 percent of the principal or total amount of the securities being issued or (b) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

(iv) The respective financing transactions will not be subject to the requirement to maintain either unsecured long-term debt or any commercial paper that may be issued at investment grade level; and

(v) The Applicants may issue short-term and/or long-term debt under circumstances when the debt, upon issuance, is either unrated or is rated below investment grade.

In addition, the Capitalization Order reserved jurisdiction over (a) the financing authorizations at a time that the common equity ratio levels of Allegheny and AE Supply were below 28 percent and 20 percent, respectively, and (b) the issuance of debt securities at an interest rate in excess of the modified interest rates. By order dated July 23, 2003 (Holding Co. Act Release No. 27701) (''July 23 Order''), the Commission released jurisdiction over the issuance by Allegheny of up to $325 million of convertible trust preferred securities through a newly organized Capital Corp (as defined in the Original Financing Order), with the proceeds to be provided to Allegheny in exchange for its subordinated debentures, with warrants.

As of December 31, 2002, Allegheny's common equity on a consolidated basis was below the 28 percent common equity ratio required by the Capitalization Order. In addition, AE Supply's common equity ratio may be below 20 percent. Applicants, therefore, seek in this Application a release of jurisdiction over guarantee authority that AE Supply requires in order to complete specific transactions described below. Completion of these transactions constitutes a part of the plan developed by the Applicants for resolution of their current financial difficulties, as described in their application submitted to the Commission on July 17, 2003, as amended on July 23, 2003, seeking authorization to issue the securities in the July 23 Order (''Trust Preferred Securities Application''). The dividend authority for ATF and AESDS requested in this Application also is necessary to implement this plan fully.

I. Background Information

The Applicants state that they continue to make significant progress toward the resolution of their financial difficulties. On July 25, 2003, Allegheny completed its private placement of $300 million of convertible trust preferred securities, as authorized by the July 23 Order. On July 28, 2003, AE Supply announced that its subsidiary ATF had entered into an agreement to sell its

[1] West Penn Power Company (''West Penn''), Monongahela Power Company (''Monongahela''), Potomac Edison Company (''Potomac Edison'') and Mountaineer Gas Company, a subsidiary of Monongahela, are referred to in this Application as the ''Operating Companies''.

[2] It should be noted, however, that the interest rate applicable after the occurrence of a default may be increased by an additional increment, typically 200 basis points.

energy supply contract with the California Department of Water Resources (''CDWR Contract'') and associated hedge transactions (collectively, ''West Book'') to J. Aron & Company (''Aron''), a division of The Goldman Sachs Group, for $405 million, subject to adjustments for market price changes and hedge transactions not transferred. On September 15, 2003, AE Supply and ATF announced that they completed the sale of the West Book to Aron for $354 million. Much of the adjustment from the estimated sale price, previously announced on July 28, 2003, is attributable to contracts with one counterparty, valued at $38.6 million, which were removed from the sale by mutual agreement of the parties. Changes in the mark-to-market value of the remaining contracts at closing and reduction in the number of remaining trades assumed by Aron, account for the rest of the adjustment. The proceeds from the sale will be applied, in large part, to finance the termination of tolling agreements with Williams Companies, Inc. and Las Vegas Cogeneration II and certain related hedging arrangements. In addition, Allegheny will have deposited, after certain escrow funds are released and under authorization by certain of its creditors, the remainder of the proceeds (estimated to be approximately $75 million) in a cash collateral account for the benefit of certain of its lenders.[3] These funds will be available to reduce the amount of AE Supply's debt that must be refinanced should Allegheny receive Commission authorization and then decide to refinance its bank borrowings.

Sale of the West Book and the sale of the securities authorized by the July 23 Order are the major components of Allegheny's plan to return to financial health. In addition, AE Supply and its subsidiaries—Allegheny Energy Supply Conemaugh LLC, Allegheny Energy Supply Hunlock Creek LLC, Allegheny Trading Finance Company, and Allegheny Energy Supply Development Services LLC—have entered into asset sales agreements described below, which also are an important part of this plan. Applicants state that the authority they seek in this Application is important to obtaining full value from these transactions. The resulting proceeds will make available significant additional cash, which can be used to reduce debt and improve the common equity of the Applicants. In short, authority sought in this Amendment will assist directly in permitting the Applicants to achieve the capitalization standards required by the Commission.

II. Summary of Financing Request

Applicants are seeking a release of jurisdiction by the Commission over authority of AE Supply to engage in certain guarantee and other transactions. In the Capitalization Order, the Commission reserved jurisdiction over the financing authorizations granted in the Financing Order if the Applicants' capitalization did not meet the Common Equity Conditions. Applicants request that the Commission release jurisdiction over $600 million of the Aggregate Guarantee Limitation, which AE Supply will utilize to undertake the guarantee obligations summarized below. To date, Allegheny and its subsidiaries have used $42.6 million of $3 billion Aggregate Guarantee Limitation.

A. Hunlock Guarantees

By agreement, AE Supply agreed to seek authority from the Commission to guarantee certain obligations of Allegheny Energy Supply Hunlock Creek, LLC (''Hunlock''), an exempt wholesale generator (''EWG'') and wholly-owned subsidiary of Allegheny. Hunlock owns a 50 percent general partner interest in Hunlock Creek Energy Ventures (the ''Hunlock Partnership''), which also is an EWG. UGI Hunlock Development Company (''UGI Hunlock'') owns the remaining partnership interests in the Hunlock Partnership. The Hunlock Partnership owns a 44 MW combustion turbine generator and a 48 MW coal-fired generation facility known as the Hunlock Creek Electric Generating Station located in Hunlock Creek, Pennsylvania (''Hunlock Power Station'').

In entering into the Hunlock partnership agreement (''Hunlock Partnership Agreement''), Hunlock and UGI Hunlock granted to each other certain put and call options, which, among other things, gave UGI Hunlock the right, for five years from the date of the agreement (December 8, 2000) to cause AE Supply to purchase the combustion turbine and/or the Hunlock Power Station from the Hunlock Partnership for a purchase price of $15 million plus the value of all the Hunlock Power Station's inventory, and a price for the combustion turbine equal to its then current book value. The current combined price for the combustion turbine and the Hunlock Power Station is estimated at approximately $42 million, which exceeds the current estimate of the fair market value of this property. The Hunlock Partnership Agreement also gave Hunlock the right to require the Hunlock Partnership to sell the Hunlock Power Station (but not the combustion turbine) to AE Supply at any time following the failure of UGI Hunlock to participate in certain expansion projects. Because Hunlock, not AE Supply, was the signatory to the Hunlock Partnership Agreement, a *bona fide* dispute arose concerning which company—Hunlock or AE Supply—had the rights and obligations under the Hunlock Partnership Agreement.

AE Supply and Hunlock sought to extend the terms of the put and call options under the Hunlock Partnership Agreement, which currently are exercisable, and to clarify that Hunlock, not AE Supply, would be the obligor on the put option (''Hunlock Obligation''). They also agreed that AE Supply would guarantee the Hunlock Obligation upon receipt from the Commission of authority under the Act to do so. The put and call options were, therefore, amended to provide that they could be exercised only for ninety days following January 1, 2006, with Hunlock confirmed to be the obligor under the put option. AE Supply paid $3 million to UGI Development (UGI Hunlock's parent) in exchange for UGI Development and UGI Hunlock releasing AE Supply from any current obligation it had under the put option of the Hunlock Partnership Agreement. In addition, UGI Hunlock and Hunlock agreed to extend the terms of the put and call options under the Hunlock Partnership Agreement and clarify that Hunlock would be the obligor under the Hunlock Partnership Agreement.

Applicants therefore request authority for AE Supply to guarantee Hunlock's obligations under the Hunlock Obligation. Entering into this guarantee will allow AE Supply to maximize the proceeds from the sale, which is described below, of interests in the Conemaugh Generating Station near Johnstown, Pennsylvania (''Conemaugh Interest'').[4] Depending upon market prices for generating plants in 2006, AE Supply could be called upon to perform Hunlock's obligations to purchase the

[3] As a condition to closing, Aron escrowed $71 million of the proceeds pending an order from the Commission authorizing AE Supply to undertake the guarantees connected with the sale of the West Book.

[4] The $5 million of the sale price for the Conemaugh Interest placed into escrow will be released at the earlier of (a) the time that AE Supply enters into an agreement to guarantee Allegheny Energy Supply Conemaugh LLC's indemnification obligations and an agreement to guarantee the Hunlock Obligation, or (b) April 15, 2006. Therefore, the guarantee of Hunlock's obligations under the Hunlock Obligation is a precondition to an expeditious release from escrow of the $5 million of the proceeds of the sale of the Conemaugh Interest.

combustion turbine and the Hunlock Power Station at a price that would be greater than their then current market value.

B. Conemaugh Guarantees

On February 25, 2003, AE Supply and its wholly-owned subsidiary, Allegheny Energy Supply Conemaugh, LLC (''Conemaugh''), an EWG under the Act, entered into an agreement (''Conemaugh Agreement'') to sell the Conemaugh Interest, which is an 83-megawatt (''MW'') share of the 1,711–MW coal-fired Conemaugh Generating Station, to UGI Development Company (''UGI Development''), an indirect, wholly owned subsidiary of UGI Corp. (''UGI''). The agreed upon sale price was approximately $51.25 million, subject to a $3 million credit in favor of UGI Development. That sale supplied (and the return on the aggregate $6 million placed into two escrows will supply) cash needed to reduce debt and is part of Allegheny's overall plan to return to financial health.

Under the Conemaugh Agreement, AE Supply and Conemaugh agreed, jointly and severally, to indemnify UGI Development, its affiliates, and their respective directors, officers, employees, agents and representatives (collectively, ''UGI Parties'') against certain losses arising in the event of a breach of the Conemaugh Agreement. Any requirement that AE Supply in fact indemnify a UGI Party under its joint and several obligations for a breach by Conemaugh would represent a guarantee of the obligations of its subsidiary, which would be contrary to the Capitalization Order as long as the capitalization standards set forth in that order are not met. In addition, although the sale of the Conemaugh Interest resulted in Conemaugh exiting the generation business, to the extent it retains EWG status, indemnification of its obligations by AE Supply also could have been viewed as an additional investment in an EWG. The additional investments would be contrary to the Capitalization Order as long as the Common Equity Conditions are not met.

For these reasons, the parties amended the Conemaugh Agreement to delete all obligations of AE Supply to indemnify the UGI Parties for losses arising out of breaches of the Conemaugh Agreement by Conemaugh. The sale price for the amended transaction was $51.25 million, without a $3-million credit for UGI Development. The parties agreed that $5 million of the sale price for the Conemaugh Interest would be placed into escrow until the earlier of (i) the time when AE Supply entered into an agreement to guarantee Conemaugh's indemnification obligations (''Conemaugh Obligations'') and an agreement to guarantee the Hunlock Obligation or (ii) April 15, 2006 (''Escrow Termination Date''). Prior to the Escrow Termination Date, UGI will be entitled to distributions in accordance with the Conemaugh Obligations or the Hunlock Obligation. Furthermore, the parties entered into an agreement (''Filing Agreement'') to require AE Supply to file with the Commission for authority to guarantee the Conemaugh Obligations and the Hunlock Obligation within 60 days of the closing (June 26, 2003) of the sale of the Conemaugh Interest. AE Supply deposited $1 million into escrow to guarantee its obligation to file with the Commission as set forth in the Filing Agreement. The parties also agreed that AE Supply would enter into an agreement to guarantee the Conemaugh Obligations and the Hunlock Obligation upon receipt from the Commission of authority under the Act to do so.

Applicants, therefore, are requesting that the Commission authorize AE Supply to guarantee those obligations. Applicants state that this authority is appropriate because the burden of undertaking this guarantee obligation easily is offset by the benefits the Allegheny system currently derives through the sale of the Conemaugh Interest and will derive from the receipt of the portion of the sale price currently held in escrow.

Applicants state that the indemnification obligations that AE Supply would guarantee are customary obligations of sellers of assets of this type. They fall into four broad classes, viz., obligations to indemnify for losses arising out of: (i) Breaches by Conemaugh of its obligations under any of its covenants or agreements contained in the Conemaugh Agreement or the agreement relating to the Hunlock facility; (ii) breaches by Conemaugh of its representations and warranties made in the Conemaugh Agreement, (iii) certain liabilities or obligations of Conemaugh or associated with its ownership of the Conemaugh Interest, and (iv) the failure of Conemaugh to comply with the provisions of any applicable bulk sales or transfer laws. This list of obligations and liabilities that AE Supply would guarantee is typical of the guarantee or indemnification obligations that parent companies normally provide in a commercial context, according to the Applicants.

In addition, Conemaugh only has an obligation to indemnify UGI Parties to the extent the UGI Parties' losses subject to indemnification exceed $500,000; however, this limitation on indemnification does not apply to losses related to breaches of Conemaugh's representations and warranties regarding title to the Conemaugh Interest or to breaches of its covenants or agreements. Applicants, therefore, submit that the undertaking by AE Supply of the proposed guarantee obligations is partially mitigated and that the remaining risk is outweighed by the benefits that will accrue to the Allegheny system through the return of the escrowed funds and the use of the escrowed funds to reduce debt.

C. West Book Guarantees and Dividend Authority

As noted above, AE Supply and its subsidiary ATF completed the sale of the West Book to Aron.

i. Guarantee Authority

AE Supply has agreed as part of the West Book sale to seek authority from the Commission to guarantee ATF's payment obligations under the sales agreement. ATF was established for the sole purpose of owning the CDWR Contract and performing obligations under that contract. Accordingly, upon the distribution of the proceeds of the sale of the contract from ATF to AE Supply, ATF would be left without resources to meet indemnification obligations, if any arise. ATF's potential payment obligations under the sales agreement consist of indemnification paid to Aron and its affiliates for losses they incur arising out of breaches of representations, warranties, covenants, agreements and other obligations contained in or connected with the sales agreement.

Other obligations of ATF that AE Supply would guarantee include a duty to operate its business prior to closing in accordance with past practice; to provide Aron with access to books and records relating to the contracts and to cooperate in the exchange of information, to use its best efforts to obtain necessary regulatory approvals, to notify Aron of significant changes in facts and circumstances, to pay all taxes attributable to the transfer of the contracts, and to file tax returns relating to the contracts for all periods prior to the closing date. ATF also has agreed to indemnify Aron against losses incurred as a result of certain specified pending class-action litigations relating to wholesale sales of electricity in California, which would be guaranteed by AE Supply under the authority sought. ATF's indemnification obligations are subject to a $2 million deductible. Applicants do not believe

any indemnification obligation is likely to arise. Under the sales agreement, until AE Supply receives authority to guarantee ATF's obligations, 20 percent of the proceeds of the West Book sale will be held in escrow to support ATF's indemnity obligation and will be unavailable to reduce debt at AE Supply.

ii. Dividend Authority

Finally, Applicants seek authority for ATF to dividend out of capital to AE Supply up to the full amount of the cash proceeds of the sale of the CDWR Contract. The CDWR Contract is ATF's only significant asset; and following completion of its sale, ATF will not engage in other business activities. The dividends themselves are necessary to allow AE Supply to reduce debt and fully implement its plans for returning to financial health and compliance with the Commission's capitalization requirements.

Finally, AESDS, which engages in generation facility development, has entered into an agreement to sell a combustion turbine currently held in inventory for a purchase price of $8 million, subject to certain adjustments. This turbine does not constitute ''utility assets,'' as defined in Section 2(a)(18) of the Act. Applicants request authority for AESDS to dividend up to the full amount of the proceeds of this sale to AE Supply, which will use these proceeds for general corporate purposes and to enhance its liquidity. Applicants expect that AESDS will conduct no further business following completion of the sale and the dividending of the proceeds of the asset sale to AE Supply.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24500 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26181; 812–12952]

Franklin Floating Rate Trust, et al.; Notice of Application

September 23, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges. The order would supercede a prior order (''Prior Order'').[1]

APPLICANTS: Franklin Floating Rate Trust (''FR Fund''), Franklin Mutual Recovery Fund (''FMR Fund,'' together with FR Fund, the ''Funds''), Franklin Advisers, Inc. (''Franklin Advisers''), Franklin Mutual Advisers, LLC (''Mutual Advisers,'' together with Franklin Advisers, the ''Advisers''), Franklin/Templeton Distributors, Inc. (the ''Distributor''), Franklin Templeton Services, LLC (the ''Administrator'').

FILING DATES: The application was filed on March 26, 2003, and amended on September 9, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 17, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0527 or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Delaware statutory trusts. Franklin Advisers, a California corporation, and Mutual Advisers, a Delaware limited liability company, are registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment manager to the FR Fund and FMR Fund, respectively. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act''), serves as principal underwriter to the Funds. The Administrator is the administrator of the Funds and is responsible for managing the Funds' business affairs. The Advisers, the Distributor and the Administrator are wholly-owned subsidiaries of Franklin Resources, Inc.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which either of the Advisers, the Distributor or the Administrator or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or the Administrator acts as investment adviser, principal underwriter or administrator and which operates as an interval fund pursuant to rule 23c–3 under the Act (included in the term ''Funds'').[2]

3. The investment objective of the FR Fund is to provide as high a level of current income and preservation of capital as is consistent with investment primarily in senior secured corporate loans and senior secured debt securities with floating or variable rates. The investment objective of the FMR Fund is capital appreciation. The FMR Fund invests in equity and debt instruments in the categories of bankruptcy and distressed companies, risk arbitrage, and undervalued stocks.

4. The Funds continuously offer their shares to the public at net asset value. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds intend to operate as ''interval funds'' pursuant to rule 23c–3 under the Act and to make periodic repurchase offers to their respective shareholders.

[1] Franklin Floating Rate Trust *et al.*, Investment Company Act Release Nos. 23033 (Feb. 20, 1998) (notice) and 23068 (Mar. 17, 1998) (order). The Prior Order permits certain registered closed-end investment companies to impose an early withdrawal charge.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

5. The Funds seek the flexibility to be structured as multiple-class funds. The FMR Fund currently intends to, and the FR Fund may in the future, offer four or more different classes of shares. The FMR Fund will offer Class B shares at net asset value without a front-end sales charge, but subject to an early withdrawal charge (''EWC'') on shares that are repurchased by a Fund within seven years of the date of purchase (''Class B Shares''). The FMR Fund will offer Class A shares at net asset value with a front-end sales charge and also subject to an EWC in certain circumstances (''Class A Shares''). The FMR Fund will also offer Class C shares at net asset value with a front-end sales charge and also subject to an EWC on shares that are repurchased by a Fund within eighteen months of the date of purchase (''Class C Shares''). The FMR Fund will also offer Advisor Class shares at net asset value without a front-end sales charge or EWC (''Advisor Class Shares''). Class A Shares will be subject to an annual distribution fee and/or service fee of up to 0.25% of average daily net assets. Class B and Class C Shares will be subject to an annual distribution fee of up to 0.75% of average daily net assets and an annual service fee of up to 0.25% of average daily net assets. Advisor Class Shares will be subject to an annual distribution fee and/or service fee of up to 0.50% of average daily net assets. Class B Shares will automatically convert to Class A Shares after a set period of time. The Funds may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees.

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule''). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.

7. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, Class C or Advisor Class Shares. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

9. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, and that are in the Franklin Templeton Investments group of investment companies. Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, each Fund will treat the EWCs as if they were a contingent deferred sales charge (''CDSC'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections (18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes of the Funds is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their securities and provide investors with a broader choice of shareholders services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of

securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds operate pursuant to rule 23c–3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permit open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3, under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule, as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 03–24453 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48507; File No. SR–CBOE–2003–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

September 22, 2003.

On July 27, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The **Federal Register** published the proposed rule change for comment on August 19, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] and believes that the proposed rules should expand access to the CBOE's electronic book in a manner that is consistent with Section 11(a) of the Act.[7] Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2003–27), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24504 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 49826 (August 12, 2003), 68 FR 49826.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k(a).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48520; File No. SR–OCC–2002–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Market-Maker Account Agreements

September 22, 2003.

I. Introduction

On May 21, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 18, 2002, amended proposed rule change SR–OCC–2002–10 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 24, 2003.[2] No comment letters were received. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47691, (April 17, 2003), 68 FR 20207 (April 24, 2003) [File No. SR–OCC–2002–10].

Commission is granting approval of the proposed rule change.

II. Description

The purpose of the rule change is to amend Article VI, Section 3 of OCC's By-Laws and Chapter XI, Rule 1105 of OCC's Rules to eliminate the requirement that a clearing member must obtain a specified form of account agreement from each market-maker for whom it carries an account and must submit the agreement to OCC for approval. OCC believes that such submissions to OCC are no longer necessary to perfect its security interest in clearing members' market-maker accounts under the Uniform Commercial Code (''UCC'') and are administratively burdensome for OCC and its clearing members.

The rule change also adds two new interpretive statements to Article VI, Section 3. Interpretation .02 clarifies the application to OCC clearing accounts of certain UCC amendments to Article 8 and to Article 9. Interpretation .03 clarifies that OCC's lien on positions in clearing member accounts extends to short security futures positions, as well as all other assets, and that OCC's lien secures clearing member obligations on long security futures positions, as well as all other obligations arising from the applicable account or accounts.

1. Background

Article VI, Section 3, of OCC's By-Laws specifies the types of clearing accounts that a clearing member may have at OCC, including accounts in which a clearing member may carry positions of market professionals such as options market-makers, JBO participants,[3] and stock specialists (referred to collectively herein as ''market-makers'' and ''market-maker accounts''). Clearing members that maintain market-maker accounts at OCC must, according to the current provisions of Article VI, Section 3, obtain and submit to OCC for approval certain agreements from each market-maker whose funds and positions are included in such market-maker accounts. The principal reason for requiring the filing of these agreements with OCC was to ensure that OCC's security interest in and setoff rights against long option positions and assets deposited as margin in market-maker accounts would be protected under the UCC as it existed prior to the 1994 UCC amendments in the event of a clearing member insolvency.

OCC currently requires that a clearing member file with OCC a specified form of account agreement, executed by the clearing member and each market-maker included in the account, containing the required consents for the applicable type of market-maker account.[4] Having to submit each of the agreements to OCC for OCC review is cumbersome and imposes administrative burdens on both clearing members and OCC staff. Moreover, OCC believes that there may be potential for confusion in the legal relationships established through these documents. Although the agreements are not intended to create contractual privity between OCC and the market-maker, OCC believes it might be possible to misinterpret the agreements as doing so.

2. Proposed Changes

Because of the UCC amendments in 1994, OCC believes it is no longer necessary to require clearing members to file market-maker account agreements with OCC in order to protect OCC's security interest in and setoff rights against funds and positions in market-maker accounts.[5] The UCC amendments established new rules specifically tailored to govern the ''indirect holding system'' for securities and certain other investment property.[6] Under these rules, OCC may obtain an automatically perfected, first-priority security interest in assets in market-maker accounts through provisions in OCC's By-Laws or Rules. No grant of a security interest from the market-maker to OCC is required.

Under the UCC amendments, OCC and its clearing members are ''securities intermediaries,''[7] and an OCC-issued option is a ''financial asset.''[8] A person acquires a ''security entitlement''[9] and becomes an ''entitlement holder''[10] when a securities intermediary credits a financial asset to that person's account.[11] OCC's clearing members acquire a security entitlement against OCC when OCC credits positions to their accounts. The clearing members' customers (including market-makers) acquire security entitlements against the clearing member with respect to positions carried for those customers on the books of the clearing member.

In order for OCC to acquire a perfected security interest in clearing members' security entitlements, OCC must obtain ''control'' over the entitlements or the ''securities account'' in which they are held.[12] UCC 8–106(e) provides that the securities intermediary has control ''[i]f an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary.''

OCC's revised by-law and rule will state that the clearing member (*i.e.*, the entitlement holder) agrees and represents that it has obtained the agreement of each market-maker whose positions and transactions are included in the account and that OCC (*i.e.*, the securities intermediary) has a lien on long positions and margin in each market-maker account. Consequently, OCC will have a security interest perfected by control of the security entitlements in each market-maker account whether or not it has obtained a signed agreement from each market-maker. Furthermore, OCC's security interest has priority over any competing interests. ''A security interest in a security entitlement or a securities account[13] granted to the debtor's own

[3] Under Article I, Section 1 of OCC's By-Laws, a ''JBO participant'' is a registered broker-dealer that ''(i) maintains a joint back office arrangement with a clearing member pursuant to the requirements of Regulation T promulgated by the Board of Governors of the Federal Reserve System; (ii) meets the requirements applicable to JBO participants as specified in exchange rules; and (iii) consents to having his exchange transactions cleared and positions carried in a JBO participants account.'' Unless the context requires otherwise, a JBO participant is a market-maker for purposes of OCC's By-Laws and all of OCC's Rules except for Chapter IV.

[4] While the content of the agreements may vary by type of market-maker account, all agreements specify OCC's right to a lien on all assets in the account, the right to carry positions ''net,'' and the right to close out positions. Market-makers whose assets are carried at OCC in combined accounts with other market-makers are required to consent to the commingling of their positions with the positions of other market-makers. Because OCC's lien on all assets in a combined market-makers' account covers any obligation arising from the commingled account, assets attributable to one market-maker may be used by OCC to offset obligations of the clearing member that are attributable to the activity of a different market-maker.

[5] OCC did not propose to eliminate the requirement that clearing members file market-maker account agreements with OCC immediately after the adoption of the UCC amendments because that requirement was not inconsistent with the UCC amendments and because the UCC amendments were not immediately adopted in all U.S. jurisdictions. Because OCC is expecting an increase in market-maker account openings as a result of security futures trading, it is now a business priority for OCC to eliminate the requirement in order to relieve administrative burdens for both OCC and its clearing members.

[6] Part 5 of Article 8 of the UCC describes the core of the package of rights of a person who holds a security through a securities intermediary.

[7] UCC 8–102(a)(14).

[8] UCC 8–102(a)(9)(ii) and 8–103(e).

[9] UCC 8–102(a)(17).

[10] UCC 8–102(a)(7).

[11] UCC 8–501(b)(1).

[12] UCC 9–314(a) and 9–106(a).

[13] UCC 8–501(a) defines ''securities account'' to mean ''an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.'' UCC 9–102(a)(14) defines ''commodity account'' as an account

Continued

securities intermediary has priority over any security interest granted by the debtor to another secured party.'' [14]

Because it remains the case that as between a clearing member and its customers (including market-makers), the clearing member has a duty to obtain each customer's consent before subjecting the customer's securities to a security interest or taking certain other actions potentially affecting the customer's interests,[15] the rule continues to require clearing members to obtain specified agreements from market-makers and to require them to represent to OCC that such agreements have in fact been obtained. Those clearing members that choose to continue to use an existing form of market-maker account agreement will be permitted to do so, but OCC will also permit the agreements required under Article VI, Section 3 of its By-Laws to be incorporated into a clearing member's own forms of account agreements to the extent that the clearing member chooses to do so.

OCC also will add two new items to the Interpretations and Policies to Article VI, Section 3. The first sentence of new Interpretation .02 sets forth a representation and warranty from each clearing member that it has obtained the agreement of each person for whom a transaction is effected in any account of the clearing member established and maintained pursuant to the provisions of Section 3, including the granting of a security interest in the account to OCC, and that the inclusion of the person's transactions and positions in such account is in compliance with the laws, regulations, and rules applicable to the clearing member.

This representation will apply to not only market-maker accounts and JBO participant accounts but also to firm accounts, pledge accounts, securities customer accounts, cross margining accounts, and segregated futures accounts that are provided for under paragraphs (a) and (d) through (g) of Section 3. While OCC has never required that a specific form of agreement be obtained by clearing members from persons whose transactions are included in these other types of accounts, Commission Rule 15c3–3, Rule 8c–1, Rule 15c2–1, and the Commission's hypothecation rules, as well as certain state laws, where applicable, require that certain consents and agreements be obtained.[16]

The second sentence of new Interpretation .02 is intended to make clear that the rights of OCC, including its security interest, in any account of the clearing member with OCC are enforceable in accordance with their terms even if the clearing member fails in its obligations to obtain the required consents or agreements from its customers. This is consistent with the provisions of UCC Article 8, under which OCC's security interest is protected.[17]

The first sentence of new Interpretation 03 will clarify that pursuant to Article VI, Section 3 of OCC's By-Laws, OCC's lien extends to all assets in account which are ''investment property'' as defined under Article 9 of the UCC,[18] including long and short positions in security futures and any other asset in the account. This interpretation is consistent with OCC's long-standing interpretation of Section 3 of Article VI.

The second sentence of Interpretation .03 more broadly clarifies that OCC's lien acts as security for all obligations of the clearing member to OCC with respect to separate or combined market-maker accounts, customer accounts, or segregated futures accounts. OCC's lien secures the clearing member's obligation with respect to long security futures positions in the account. Long security futures positions, unlike long options which are always an asset, may be a liability if the market has moved against those positions since the last mark-to-market payment. In order to avoid any confusion caused by reference to short positions but not to long positions, Interpretation .03 clarifies that obligations to OCC with respect to all exchange transactions should be read broadly to encompass, where applicable, obligations arising from long or short positions, obligations to make payments or delivery under cleared contracts, and obligations with respect to fees and charges associated with such transactions.

Changes to Rule 1105(b) are made to conform that rule to Article VI, Section 3. Rather than refer to the market-maker account agreement, the rule will now refer to the provisions in Article VI, Section 3 of the By-Laws which are applicable to the market-maker account.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[19] The rule change permits OCC to eliminate the requirement that a clearing member must obtain a specified form of account agreement from each market-maker for whom it carries an account and submit those agreements to OCC for approval because UCC amendments in conjunction with requirements under federal and state law make the requirement redundant and unnecessary. OCC's rule change does not substantively alter the rights or obligations of OCC clearing members or their customers but rather streamlines the process by which OCC perfects its security interest in clearing members' market-maker accounts under the UCC. Accordingly, the Commission finds the rule change is consistent with section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in

maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.'' Accounts established under Section 3 of OCC's By-Laws would ordinarily be ''securities accounts,'' but certain accounts might be construed as commodity accounts or as both securities accounts and commodity account given that OCC may clear commodity contracts and security futures as well as security options. In any case, the Article 9 rules governing perfection and priority of security interests in commodity accounts and assets contained therein are substantively identical to those governing securities accounts and assets therein because all are included in the UCC 9–102(a)(49) definition of ''investment property'' to which those rules apply. To the extent that an account is a ''commodity account,'' OCC will fall within the definition of a ''commodity intermediary'' under UCC 9–102(a)(17).

[14] UCC 9–328(3).

[15] See UCC 8–504(b), which states that a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain on behalf of an entitlement holder except as otherwise agreed by the entitlement holder.

[16] For example, consent to the commingling of a customer's securities with the securities of another customer must be obtained. Such consents are normally included in the account documentation obtained by broker-dealers from their customers and are the responsibility of the broker-dealers.

[17] UCC 8–503(e) provides that an action based on an entitlement holder's property interest with respect to a financial asset held for its account by a securities intermediary, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of the financial asset or an interest therein (which would include lien holders) who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations to maintain the property for the entitlement holder. *See, also,* UCC 8–511(b), which provides that a claim of a creditor (*i.e.,* OCC) of a securities intermediary (*i.e.,* the failed clearing member) that is perfected by control has priority over the claims of the securities intermediary's entitlement holders.

[18] UCC 9–102(a)(49) defines ''investment property'' to mean a ''security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.''

[19] 15 U.S.C. 78q–1(b)(3)(F).

particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder. *It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24452 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48522; File No. SR–PCX–2003–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Making Housekeeping Changes to Its Options Trading Rules

September 23, 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 July 8, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 by the PCX. On September 10, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules to clarify existing provisions, eliminate superfluous provisions, re-number the rules where appropriate in order to coincide with PCX Plus, and otherwise bring the rules up-to-date.

The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX 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 May 7, 1999, the Exchange filed with the Commission a proposed rule change, SR–PCX–99–13,[4] to modify its rules pertaining to Market Makers and Lead Market Makers (''LMMs''). The PCX represents that the purpose of that rule change was to clarify existing provisions, eliminate superfluous provisions, and otherwise bring its rules up-to-date. The Exchange withdrew this filing on April 9, 2002, with the intention to re-file after its PCX Plus proposal was approved.[5] The Exchange proposes to re-file this proposed rule change with additional housekeeping changes as a result of the Commission's approval of PCX Plus.

The Exchange proposes to make the following changes to the text of PCX Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts'') with regard to Market Makers and LMMs:

First, the Exchange proposes to amend PCX Rule 6.28(b)(5) with respect to Fast Markets and Unusual Market Conditions. Under the proposed rule change, the reference to PCX Rule 6.37(f) will be corrected to reflect the correct rule number, which is PCX Rule 6.37, Commentary .05. This is a technical error that the Exchange wishes to correct at this time.

Second, the Exchange proposes to amend PCX Rule 6.32(e) to clarify that the section is only applicable with regard to Market Maker orders entered from off the floor that are not entitled to special margin treatment pursuant to the previous subsections. The Exchange believes that the proposed rule amendment will clarify any possible confusion in the rule.

Third, the PCX proposes changes to PCX Rules 6.35 and 6.38(a) regarding the procedures for selection of Market Maker primary appointment zones, so that in all cases, Market Makers would be required to select a primary zone prior to the expiration of a 60-day grace period. Currently, PCX Rule 6.35 requires that the PCX's Options Allocation Committee assign Market Makers with a primary appointment zone. However, it does not expressly require that Market Makers apply for such appointments. It only states that a Market Maker's refusal to accept a primary appointment zone may be deemed a sufficient cause for termination or suspension of a Market Maker's registration. This change should clarify any confusion as to a Market Maker's requirement for choosing a primary appointment zone. The Exchange also proposes to make PCX Rule 6.38 consistent with the changes to PCX Rule 6.35 by replacing the phrase ''shall be given'' a primary appointment zone with the phrase ''must obtain'' a primary appointment zone.

Fourth, the Exchange proposes to move the current text in Commentary .03 to PCX Rule 6.35(f), leaving Commentary .03 as reserved. The PCX believes it is more appropriate to have this text in the rule as opposed to the commentary.

Fifth, PCX proposes to add a provision on FLEX Option to PCX Rule 6.36 in order to conform its Letters of Guarantee rule to its Letters of Authorization rule, as stated in PCX Rule 6.45. The Exchange believes the change would clarify any confusion with respect to letters of guarantee and letters of authorization.

Sixth, the Exchange proposes to eliminate OFPA B–4, Subject: Market Maker Trading on the PSE Equity Floors, as the reference to equity floors is no longer applicable to PCX.

Seventh, the PCX proposes to change PCX Rule 6.82 by replacing references to ''alternate LMMs'' and ''substitute LMMs'' with references to ''interim LMMs'' and ''back-up LMMs,'' respectively. The Exchange believes the new references better define the intended role of the LMMs in these circumstances. The Exchange also proposes to amend PCX Rule 6.82(c)(3) in order to clarify the LMM's obligation to generate and update its quotations.

Eighth, the Exchange proposes to clarify that, under PCX Rule 6.84(g), a Market Maker trading for a joint account must have a primary appointment, but

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the PCX's original Rule 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (notice of filing of File No. SR–PCX–99–13).

[5] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX Plus, a new electronic platform for options trading).

the joint account itself is not required to have a primary appointment.[6]

Ninth, the PCX proposes to amend PCX Rule 6.92 on Intermarket Linkage by adding a reference to ''PCX Plus'' in Rule 6.92(a)(7)(ii). This change will clarify that the Intermarket Linkage rules apply to Members or Member Firms who are logged on to PCX Plus in an Eligible Option Class.

Tenth, the Exchange proposes to add an example of an Associated Person into PCX Rule 6.52, Commentary .03 for clarity.

Lastly, the Exchange proposes to make various housekeeping, grammatical, and conforming numbering changes as a result of PCX Plus, to the current rules on Market Makers and LMMs.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The Exchange believes that the proposed rule change, as amended, is also consistent with Section 6(b)(6) of the Act,[9] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[6] PCX Rule 6.84(g) currently provides that ''[j]oint accounts shall not be permitted to enter: (1) opening transactions from off the Floor for option contracts listed on the Exchange; (2) any transactions for option contracts not listed on the Exchange; and (3) transactions for any other security. This prohibition shall not apply to transactions entered for securities underlying Exchange option contracts in the joint account.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

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 PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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 the PCX. All submissions should refer to File No. SR–PCX–2003–31 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24502 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48500; File No. SR–PCX–2003–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Composition of Its Audit Committee

September 17, 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 July 14, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On August 21, 2003, PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rule regarding its own audit committee composition. This change is aimed at helping improve the Exchange's corporate governance. Proposed new language is in italics.

RULES OF THE BOARD OF GOVERNORS

Rule 11

Committees of the Exchange

11.8(a)–(b)—No change.

Audit Committee

11.8(c). The Audit Committee shall be comprised of at least three Governors. *The Committee shall be made up entirely of Public Governors, and at least one member of the Committee shall have accounting or related financial management expertise, as the Board of Governors interprets such qualification in its business judgment.* The Committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated August 21, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange completely replaced the rule language submitted with the original filing.

Committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The Committee shall review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate. The Committee shall also recommend annually to the Board, independent public accountants as auditors of the Exchange and its subsidiaries.

11.8(d)–11.8(g)—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, PCX 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. PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that, in light of the recent changes mandated by the Sarbanes-Oxley Act of 2002 and at the request of Commission's Chairman William H. Donaldson,[4] the Exchange recently reviewed its own corporate governance structure. In doing so, the Exchange's Board of Governors felt that the Exchange's audit committee should follow many of the same requirements that it will asks its listed companies to adhere to.

Therefore, the Exchange is proposing to amend its Rule 11.8(c). The proposed rule will require that the PCX audit committee be comprised of at least three Governors. The committee shall be made up entirely of public Governors, and at least one member of the committee shall have accounting or related financial management expertise. The committee shall have the responsibility to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof. The committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The committee shall review the annual reports submitted both internally and externally and take such action with respect thereto as it may deem appropriate. The committee shall also recommend annually to the Board independent public accountants as auditors of the Exchange and its subsidiaries.

2. Statutory Basis

The Exchange believes that the proposal furthers the objectives of Section 6(b)(5)[5] of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–36 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24503 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Letter from William H. Donaldson, Chairman, Commission, to Philip D. DeFeo, Chairman, PCX, dated March 26, 2003.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48515; File No. SR–Phlx–2003–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Remote Primary Specialists

September 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a policy to permit primary specialists to trade on a remote basis in limited circumstances. Specifically, Phlx proposes to amend Phlx Rules 444, 460, 517, 522 and 523, and to adopt new Phlx Rule 524. The text of the proposed rule change is set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth below. New text is italicized; deleted text is bracketed.

* * * * *

Rule 444. Wire Connections Between Exchange and Members' Offices

Rule 444. No member or member organization shall establish or maintain any telephonic or other wire connection between his or its office and the Exchange except with the approval of the Committee. The Committee may grant or withhold such approval, and may without being obliged to assign any reason or cause for its action cause to be disconnected any such connection. *In order to facilitate communications remote specialists (whether competing or primary) shall be required to have and maintain e-mail capability acceptable to the Exchange at remote locations.*

Rule 460. Procedures for Competing Specialists

(a) Application—No change.

(b) Obligations—No change.

(c) Withdrawal

If a competing specialist seeks to withdraw from acting as such in a security, it should so notify the Committee at least three business days prior to the desired effective date of such withdrawal. Withdrawal by a competing specialist bars that Competing Specialist from applying to *trade* [compete in] that same security *as a primary or competing specialist* for 90 days following the effective date of withdrawal. *If the EAES Committee determines that extraordinary circumstances exist, it may waive the 90 day period.* When the primary specialist requests to withdraw from a security, it shall be posted for reallocation by the EAES Committee. In the interim, if the EAES Committee is satisfied that a competing specialist can continue to maintain a fair and orderly market in such security, the competing specialist shall serve as the *interim* primary specialist until the security has been reallocated. Where there is more that one competing specialist in the security, [a] *an interim* primary specialist shall be selected from among the competing specialists by the EAES Committee until reallocation. *A remote specialist may be selected as an interim primary specialist only where there is no non-remote competing specialist in the security who can continue to maintain a fair and orderly market in such security as interim primary specialist.*

(d) Competing Markets in a Security—No change.

Competing and Remote Specialist

Rule 517. Rules governing the approval of trading as a competing specialist [and as a remote competing specialist]are set forth in 460, Procedures for Competing Specialists. *Rules governing the approval of trading as a remote specialist are set forth in* [and] Rule 461, PACE Remote Specialist.[, respectively, and] *Rules 460 and 461* are incorporated by reference herein. Rules 500 through 599 shall apply both to the specialist selected by the Committee following solicitation of applications under Rule 506(a) to serve as primary specialist and to any competing specialist approved under Rule 460, except that, *subject to Rules 522 and 523 below*, the primary specialist shall determine whether a security shall be PACE registered. Applications for allocation of competing specialist privileges pursuant to Rule 460 shall contain the information required in Rule 506(b), and competing specialist privileges may be terminated on the same basis that primary specialist privileges may be removed and reallocated.

Rule 522. *When a Registrant (as defined in Rule 505) notifies the Exchange, the* [The] Committee shall institute reallocation proceedings with respect to any security voluntarily removed from PACE by its Registrant. The original Registrant shall not be reallocated the security once another applicant, *which may be a remote specialist unit*, commits to trading the security on PACE. Should no applicant commit to trading the security on PACE, the Committee shall allocate the security pursuant to Rules 506 and 511; provided, however, that if the original Registrant has applied to retain the security it shall be awarded the allocation. *The Committee shall not allocate the security to a remote specialist unit if, following solicitation, any non-remote specialist unit applicant (other than the original Registrant) commits to trading the security on PACE.*

Rule 523. The Committee shall institute reallocation proceedings *for primary specialist privileges* with respect to any non-PACE traded security should any applicant commit to trading that security *as the primary specialist unit* on PACE. The existing Registrant (*as defined in Rule 505*) shall retain *primary specialist privileges in* the security if it commits to trading the security on PACE *as the primary specialist unit*; provided, however, that the Committee may from time to time determine that, for specified periods, the existing Registrant shall not retain *primary specialist privileges in* the security in the event an applicant commits to trade the security on PACE *as the primary specialist unit. A remote specialist unit may make the commitment to trade the security on PACE as a primary specialist.*

Rule 524

A remote specialist unit may be allocated primary specialist privileges to trade any security that had previously been solicited or allocated by the Exchange but which is currently not allocated.

* * * * *

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 Phlx 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 Phlx 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

On December 21, 2001, the Commission approved Phlx Rule 460, which was designed to establish a framework pursuant to which multiple specialists could trade on the equity trading floor of the Phlx.[3] Prior to the adoption of Phlx Rule 460, there was one specialist unit (''Primary Specialist'') for each equity security traded on the floor. The Primary Specialist was approved by the Phlx's Equity Allocation, Evaluation and Securities Committee (the ''EAES Committee'')[4] pursuant to Phlx Rule 506(a) and Phlx Rule 511(b). Those rules generally provide for the allocation of equity securities (commonly called ''books'') to particular specialist units, which consist of specialists and other staff.[5]

Phlx Rule 460 currently provides that approved specialist units may apply to trade one or more securities as Competing Specialists. Each Competing

[3] *See* Securities Exchange Act Release No. 45183 (December 21, 2001), 67 FR 118 (January 2, 2002) (SR–Phlx–2001–97).

[4] *See* Phlx By-Law Article 10–6 and Phlx Rule 500.

[5] *See* Phlx Rule 501.

Specialist has the same affirmative and negative obligations under Phlx Rule 203 as are imposed on the Primary Specialist. There must be a Primary Specialist in a security in order for there to be Competing Specialists in that security.[6]

The Primary Specialist determines whether a security will trade on or off the Phlx's PACE system.[7] If the Primary Specialist determines that the security will trade on PACE, then all Competing Specialists must trade that security on PACE.[8] As stated in the proposed rule change filing to adopt Phlx Rule 460, the EAES Committee does not approve any application by a specialist to act as a Competing Specialist in any security that is not traded on the Phlx's PACE System.[9] The Phlx does not permit Competing Specialists to trade a security off the PACE system if the Primary Specialist has elected to remove the security from PACE. In such circumstances, Competing Specialists may no longer trade the security, whether on or off the PACE system, unless the security is reallocated to another specialist willing to place the security back on the PACE system.

On December 21, 2001, the Commission also approved Phlx Rule 461 in connection with the commencement of the Phlx's remote competing specialist program.[10] Pursuant to Phlx Rule 461 PACE terminals and related equipment may be provided to member organizations for trading by qualified remote Competing Specialists. In the proposed rule change filed with the Commission to adopt Phlx Rule 461, the Phlx stated that the Primary Specialist may not operate remotely. The Phlx noted, however, that it might at a future time file a proposed rule change to permit the Primary Specialist to trade from a remote location. This filing is intended to do so, in the limited circumstances listed below.

b. Proposed Rule Amendments

The Phlx proposes to permit the EAES Committee to allow Primary Specialists, trading on PACE from a remote location, to trade issues that are currently traded by specialists off PACE (''non-PACE issues''). The proposal would also permit a remote specialist, acting as primary specialist, to trade issues not traded on the Phlx at all (*i.e.*, where there currently is not an assigned specialist and the issue is on the inactive-eligible list).[11]

Under the proposed rule change, a specialist could be approved to trade securities as a Primary Specialist from a remote location, but only in the following limited circumstances: (a) where the securities are allocated on an interim basis pending reallocation, (b) where the security is voluntarily removed from PACE by the current specialist, (c) with respect to a non-PACE traded security, if another applicant commits to trading the security on PACE, and (d) where the security that has previously been allocated or solicited is currently not allocated to any specialist (*i.e.*, securities on the inactive-eligible list). A specialist would not be permitted to ''move'' equity securities to trade remotely on a primary basis.

c. Rule Changes

Phlx Rule 460. Proposed Phlx Rule 460 states that a remote specialist may be selected as the interim Primary Specialist (until the security has been reallocated) only where there is not a non-remote Competing Specialist in the security that is able to maintain a fair and orderly market in the security. Phlx Rule 460 would give the EAES Committee authority to waive the 90 day reapplication bar in extraordinary circumstances in the event that a Competing Specialist withdraws from a security.[12]

Phlx Rule 517. Proposed Phlx Rule 517 has been revised to clarify that Phlx Rule 460 provides procedures for Competing Specialists and that Phlx Rule 461 provides procedures for remote specialists. It has also been revised to clarify that a Primary Specialist's decision to trade a security on PACE is subject to the reallocation provisions of Phlx Rules 522 and 523, such that any decision by a Primary Specialist to trade a security on PACE may result in that security being reallocated to another specialist.

Phlx Rule 522. Phlx Rule 522 currently provides that the EAES Committee shall institute reallocation proceedings with respect to any security voluntarily removed from PACE. This rule applies when a specialist first removes a security from PACE.[13] The proposed rule would permit a remote specialist unit to commit to trade a security on PACE as a Primary Specialist and therefore be awarded the Primary Specialist allocation under these circumstances, unless any non-remote specialist unit applicant (other than the original Registrant) commits to trading the security on PACE. Accordingly, if there is a qualified non-remote applicant, the EAES Committee should allocate Primary Specialist privileges to such non-remote applicant.

Phlx Rule 523. Phlx Rule 523 currently provides that the EAES Committee shall institute reallocation proceedings for Primary Specialist privileges with respect to any non-PACE traded security should any applicant commit to trading that security as the Primary Specialist on PACE.[14] This rule applies where a specialist has been trading a security off PACE. Phlx Rule 523 also applies in cases where the specialist has removed the security from PACE and/or soliciting for specialist applicants to trade the security on PACE pursuant to Phlx Rule 522 did not result in a reallocation. Under the current rule, if the existing specialist commits to trading the security on PACE as the Primary Specialist, the Primary Specialist shall retain Primary Specialist privileges regardless of other applicants, except that the EAES Committee may from time to time determine that, for specified periods, the existing Primary Specialist shall not retain such privileges in the event an applicant commits to trade the security on PACE.

The proposed revisions to Phlx Rule 523 provides that a remote specialist unit may make the commitment to trade the security on PACE as a Primary

[6] A Phlx specialist may trade some securities on a primary basis and other securities on a competing basis, or may trade all its securities on either a primary or a competing basis.

[7] PACE is the electronic order routing, delivery execution and reporting system used to access the Phlx Equity Floor. *See* Phlx Rules 229 and 229A.

[8] If the Primary Specialist elects to take the security off the PACE system, the security is subject to reallocation to another specialist unit willing to trade the security on the PACE system. *See* Phlx Rule 520–523.

[9] The Phlx noted that pursuant to Phlx Rule 522 any security not traded on the PACE system may be reallocated to a specialist that is willing to trade the security on PACE. Thus, if a security is unavailable to be traded by a Competing Specialist because it is not on PACE, any specialist unit which otherwise may have applied to trade the security as a Competing Specialist may apply to trade the security as the Primary Specialist pursuant to Phlx Rule 522. Thereafter, the former Primary Specialist may apply to be a Competing Specialist. *See, supra* n.4.

[10] *See* Phlx Rule 461 and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (approving SR–Phlx–2001–98).

[11] The inactive-eligible list consists of securities, which qualify for listing, or unlisted trading privileges on Phlx but which are not allocated to any specialist.

[12] Phlx Rule 460 currently provides that ''[w]ithdrawal by a competing specialist bars that Competing Specialist from applying to compete in that same security for 90 days following the effective date of withdrawal.''

[13] In contrast, Phlx Rule 523 applies where a security has been off PACE for some time.

[14] When reallocation proceedings are commenced pursuant to Phlx Rule 522, the EAES Committee solicits specialist applications to take over Primary Specialist privileges in the security in question. By contrast, the EAES Committee, respecting reallocation proceedings pursuant to Phlx Rule 523, has not required a solicitation memorandum to be distributed.

Specialist. In terms of timing, the remote specialist may do so days or years after the security has been removed from PACE by the existing specialist. Thus, a remote specialist can be awarded Primary Specialist privileges in a security even if an on-floor specialist wants Primary Specialist privileges because, like securities on the inactive-eligible list, floor-based specialists have already had the opportunity to commit to trade the security on PACE.

Phlx Rule 524. Phlx Rule 524 would provide that a remote specialist unit may be allocated Primary Specialist privileges to trade any security that had previously been solicited or allocated by the Phlx, but is currently not allocated to any specialist. In this situation, the EAES Committee would consider any remote specialist applicant.[15]

Phlx Rule 444. Phlx Rule 444 concerns the establishment and maintenance of telephonic or other wire connections between member's offices and the Phlx. The proposed new language would add a requirement that remote specialist units, whether primary or competing, maintain e-mail capability. The purpose of this requirement is to improve communication among specialists and between specialists and the Phlx.

2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Phlx believes that offering Primary Specialist the opportunity to trade from an approved remote location may result in a greater number of securities being traded on PACE (because there may be specialists willing to trade a security on PACE, but only remotely), thereby benefiting investors using the PACE system. Additionally, the Phlx believes that the establishment of an e-mail requirement and the rule changes proposed herein are consistent with the efficient operation of the remote specialist program and will benefit investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx did not solicit or receive written comment concerning the proposal.

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 Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–10 and should be submitted by October 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24501 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

[15] Like Phlx Rule 523, Phlx Rule 524 would not require a solicitation memo to be distributed by the EAES Committee.

[16] 15 U.S.C. 78(f)(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 29, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Licenses Application.

Nos: 415, 415A.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Responses: 450.

Annual Burden: 14,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–24551 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 29, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

No: 1081.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies.

Responses: 200.

Annual Burden: 100.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–24552 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3549]

State of Delaware

As a result of the President's major disaster declaration on September 20, 2003, I find that Kent, New Castle and Sussex Counties in the State of Delaware constitute a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 19, 2003 and for economic injury until the close of business on June 21, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Wicomico and Worcester counties in the State of Maryland; Gloucester and Salem counties in the State of New Jersey; and Chester and Delaware counties in the Commonwealth of Pennsylvania.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 354908. For economic injury the number is 9X1000 for Delaware; 9X0500 for Maryland; 9X1100 for New Jersey; and 9X0700 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24541 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3548]

District of Columbia

As a result of the President's major disaster declaration on September 20, 2003, I find that the District of Columbia constitutes a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 19, 2003 and for economic injury until the close of business on June 21, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Montgomery and Prince George's counties in the State of Maryland; the Independent City of Alexandria and Arlington and Fairfax counties in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 354808. For economic injury the number is 9X0900 for District of Columbia; 9X0500 for Maryland; and 9X0100 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2003.

Cheri L. Cannon,

Acting Associate Administrator, For Disaster Assistance.

[FR Doc. 03–24542 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3547]

State of Maryland

As a result of the President's major disaster declaration on September 19, 2003, I find that the Independent City of

Baltimore, and Allegany, Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico and Worcester Counties in the State of Maryland constitute a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 18, 2003 and for economic injury until the close of business on June 21, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: the District of Columbia; Kent, New Castle and Sussex counties in the State of Delaware; Adams, Bedford, Chester, Fayette, Franklin, Fulton, Lancaster, Somerset and York counties in the Commonwealth of Pennsylvania; the Independent City of Alexandria and Accomack, Fairfax, King George, Loudoun, Prince William, and Stafford counties in the Commonwealth of Virginia; and Berkeley, Grant, Hampshire, Jefferson, Mineral, Morgan, Preston and Tucker counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 354708. For economic injury the number is 9X0500 for Maryland; 9X0900 for District of Columbia; 9X1000 for Delaware; 9X0700 for Pennsylvania; 9X0100 for Virginia; and 9X0800 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24543 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3545]

State of North Carolina

As a result of the President's major disaster declaration on September 18, 2003, I find that Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington in the State of North Carolina constitute a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 17, 2003 and for economic injury until the close of business on June 18, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bladen, Columbus, Duplin, Franklin, Greene, Lenoir, Nash, Sampson, Warren and Wilson in the State of North Carolina; Horry County in the State of South Carolina; and Brunswick, Greensville, Southampton counties and the Independent Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.100

The number assigned to this disaster for physical damage is 354508. For economic injury the number is 9W9700 for North Carolina; 9W9800 for South Carolina; and 9W9900 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24544 Filed 9–26–03; 8:45 am]

BILLING CODE 8825–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3546]

Commonwealth of Virginia

As a result of the President's major disaster declaration on September 18, 2003, I find that the Independent Cities of Alexandria, Chesapeake, Emporia, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg and the counties of Accomack, Charles City, Gloucester, Greensville, Isle of Wight, James City, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland and York in the Commonwealth of Virginia constitute a disaster area due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 17, 2003 and for economic injury until the close of business on June 18, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Arlington, Brunswick, Chesterfield, Dinwiddie,

Essex, Fairfax, Henrico, King and Queen, King George, New Kent and the Independent Cities of Colonial Heights and Petersburg in the Commonwealth of Virginia; the District of Columbia; Prince George's, Somerset and Worcester counties in the State of Maryland; and Camden, Currituck, Gates, Hertford and Northampton counties in the State of North Carolina.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 354608. For economic injury the number is 9X0100 for Virginia; 9X0200 for District of Columbia; 9X0300 for Maryland; and 9X0400 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 22, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–24540 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to grant the Nonmanufacturer Rule for Ammunition (Except Small Arms).

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Ammunition (Except Small Arms). The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before October 10, 2003.

ADDRESSES: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, (202) 619–0422, Fax (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Ammunition (Except Small Arms), North American Industry Classification System (NAICS) 332993. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Luz Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 03–24545 Filed 9–26–03; 8:45 am]

BILLING CODE 8025–01–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). The Office of the General Counsel is abolishing the Office of Program Litigation and incorporating the functions of the office into the Office of Program Law. The new material and changes are as follows:

Section S9.10 *The Office of the General Counsel* —(Organization):

Delete E. The Office of Program Litigation (S9C) in its entirety.

Reletter F. The Office of Program Law (S9E) to E.[1]

Reletter G. The Office of Public Disclosure (S9H) to F.[2]

Reletter H. The Offices of the Regional Chief Counsels (S9G–F1—S9G–FX) to G.[2]

Section S9.20 *The Office of the General Counsel*—(Functions):

Replace in its entirety, D. The Office of General Law (S9B) with the following:

D. The Office of General Law (S9B).

1. Provides legal services to the Commissioner and all components of the Agency on all non-program legal issues affecting the Agency's business management activities and administrative operations including: Procurement; contracting; patents; copyrights; budget; appropriations; personnel; ethics; adverse employment actions; employment discrimination; compensation; travel; personnel; claims by and against SSA (including but not limited to those under the Federal Tort Claims Act); electronic service delivery; labor-management relations; Touhy requests; Office of Special Programs and Services investigations; salary and other overpayments; relationships with other governmental and nongovernmental entities; and administrative governance.

2. Provides legal services and advice regarding SSA's civil defense, civil rights and security programs as well as for SSA's administration of its disclosure regulations and related statutes including the Freedom of Information and Privacy Acts and Computer Matching Agreements. Provides liaison with the Department of Justice on administering the Freedom of Information and Privacy Acts. Serves as liaison with the Comptroller General.

3. Working under the direction of the Designated Agency Ethics Official (DAEO), manages the daily operation of the Agency's ethics programs, implements decisions of the DAEO, and

provides liaison with the Office of Government Ethics, as appropriate.

4. Furnishes litigation support and litigation-related advice to the Commissioner and all components of SSA in both administrative and court litigation in connection with each of the areas mentioned above. Represents SSA in all such litigation when such direct representation is authorized by law. In other cases, makes and supervises contacts with attorneys responsible for the conduct of such litigation, including appropriate United States Attorneys and other Department of Justice officials.[2]

Delete E. The Office of Program Litigation (S9C).[2]

Reletter F. The Office of Program Law (S9E) to E.

Replace in its entirety the Functions of The Office of Program Law as follows:

1. Furnishes legal services and advice in connection with the operations and administration of the various programs administered by SSA under the Social Security Act and of other programs and areas that do not fall within the jurisdiction of the Office of General Law.[1]

2. Drafts or reviews all SSA regulatory and other **Federal Register** materials and legal instruments relating to areas within the jurisdiction of the Office of Program Law.

3. Drafts or reviews proposed testimony of SSA officials before Congress relating to any area within the jurisdiction of the Office of Program Law.

4. Drafts proposals for legislation originating in SSA, reviews specifications for such proposed legislation and reviews all proposed legislation submitted by SSA for comment. Drafts or reviews reports and letters to congressional committees, the Office of Management and Budget and others on proposed legislation and legislative matters. Prescribes the procedures to govern the routing and review within SSA of material relating to proposed legislation.[1]

5. Furnishes legal support and litigation related advice in both administrative court litigation in connection with the operations and administration by SSA of the various programs administered by SSA under the Social Security Act and of other programs and areas that do not fall within the jurisdiction of the Office of General Law.

6. Represents SSA in all such litigation when such direct representation is authorized by law and in other cases, makes and supervises contacts with attorneys responsible for the conduct of such litigation including appropriate United States Attorneys and other Department of Justice officials.

Reletter G. The Office of Public Disclosure (S9H) to F.

Reletter H. The Offices of the Regional Chief Counsels (S9G–F1—S9G–FX) to G.

[1] **Federal Register**—June 23, 2000.
[2] **Federal Register**—October 10, 2002.

Dated: September 11, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–24596 Filed 9–26–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 12, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–16123.
Date Filed: September 9, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 322, PTC COMP 1089 dated 9 September 2003, General Increase Resolution 002mm (except within Europe, between USA/US Territories and Austria, Chile, Czech Republic, Finland, France (including French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, Saint Pierre and Miquelon), Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland), Intended effective date: 1 October 2003.

Docket Number: OST–2003–16133.
Date Filed: September 9, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 323, PTC123 0252 dated 12 September 2003, TC123 North Atlantic Expedited Resolutions (except between USA and Korea (Rep. of), Malaysia) r1–r7, Intended effective date: 15 October 2003.

Docket Number: OST–2003–16134.
Date Filed: September 9, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 324, PTC123 0253 dated 12 September 2003, TC123 Mid Atlantic Expedited Resolutions r1–r6, Intended effective date: 15 October 2003.

Docket Number: OST–2003–16135.
Date Filed: September 9, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 325, PTC123 0254 dated 12 September 2003, South Atlantic Expedited Resolutions r1–r7, Intended effective date: 15 October 2003.

Docket Number: OST–2003–16168.
Date Filed: September 12, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 1090 dated 12 September 2003, Mail Vote 330—Resolution 010y, TC2/12/23/123 Establishing Passenger Fares and Related Charges—Moldova, Intended effective date: 1 November 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–24579 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to land at Woodbine Municipal Airport, Woodbine, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of approximately 127 acres of land located at Woodbine Municipal Airport, to allow its lease for non-aviation development. The parcel was part of the airport property deeded to the Borough of Woodbine on December 9, 1947 under a quit claim conveyance from the United States. The parcel was later conveyed to the Woodbine Port Authority. The Woodbine Port Authority proposes to lease the land to a developer who will develop it as a golf course.

FAA's action is to release the land from a deed provision requiring aeronautical use of the property. The Woodbine Port Authority has stated that it has no aeronautical use for the parcel now or in the near future according to the Woodbine Municipal Airport Layout Plan.

The Fair Market Value of the land will be paid to the Woodbine Port Authority for the maintenance, operation and capital development of the Woodbine Municipal Airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before October 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Clifton Anderson, Jr., Chairperson, Woodbine, New Jersey, at the following address: Mr. Clifton Sanderson, Jr., Chairperson, Woodbine Port Authority, P.O. Box 144, Woodbine, New Jersey 08270.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York, on September 19, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 03–24610 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Licensees

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy.

SUMMARY: The Federal Aviation Administration (FAA) Office of the Associate Administrator for Commercial Space Transportation (AST) is responsible for licensing entities to conduct commercial space launch and reentry operations and to operate commercial launch an reentry sites. According to the terms and conditions of a license issued by the FAA/AST, each licensee has a public safety responsibility in which they are responsible for the safe conduct of licensed commercial space transportation operations. As part of their safety responsibility, a licensee must ensure that personnel who perform safety-critical functions are not impaired, either by intoxication from alcohol or from being under the influence of unlawful drugs, such that an individual's judgment is affected while performing those safety-critical functions that can affect safe operations.

DATES: This notice is effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Izon, AST–200, Office of the Associate Administrator for Commercial Space Transportation (AST), Room 331, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591, telephone: (202) 385–4712.

SUPPLEMENTARY INFORMATION: The FAA mission includes authorizing commercial space transportation activities under 49 U.S.C. chapter 701, consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Commercial space transportation activities licensed by the FAA include launch of a launch vehicle, including a suborbital rocket, reentry of a reentry vehicle, and operation of a launch or reentry site. The FAA works to ensure that licensed activities are conducted safely so as not to jeopardize public safety or safety of property.

Under a license and implementing regulations, 14 CFR Chapter III, the FAA places responsibility for public safety on a licensee in conducting licensed activities. According to 14 CFR 415.71, a launch licensee is ''responsible for ensuring the safe conduct of a licensed launch and for ensuring that public safety and safety of property are protected at all times during the conduct of a licensed launch.'' Similarly, 14 CFR 431.71 states that in the conduct of reusable launch vehicle (RLV) missions and re-entry operations, a ''licensee is responsible for ensuring the safe conduct of an RLV mission and for protecting public health and safety and the safety of property during the conduct of the mission.'' Additionally, as stated in the terms and conditions of launch site operator licenses, a licensee is responsible for ensuring the safe operation of the site and for ensuring that public safety and safety of property are protected at all times during its licensed activities.

In placing responsibility for the safe conduct of licensed activity on a licensee, the FAA places a duty on a licensee to, among other things, safeguard against unsafe practices or conditions when conducting authorized activities, which by their very nature can be hazardous to the public and have the potential to affect the safety of the uninvolved public. Licensee vigilance is critical in this regard. A licensee's public safety responsibility includes ensuring that a person who performs a safety-critical function is not impaired, either by alcohol or from being under the influence of unlawful drugs such that personal judgment is affected when performing a safety-critical function.

Currently, there are no FAA regulations mandating a drug and alcohol testing program for licensees. However, the absence of a regulatory program requiring employee testing does not mean that the FAA is not concerned about the possible misuse of alcohol or unlawful drugs by individuals performing safety-critical functions during or in support of the conduct of licensed operations. As evidenced in other modes of transportation, the misuse of alcohol or unlawful drugs has been a factor in transportation accidents and in several instances, its detection prevented a situation that could have endangered the safety of the public.

So far, the public safety track record for the space transportation industry speaks for itself. There has not been one drug or alcohol related incident or accident in the decades of U.S. space launch experience. Accordingly, the FAA is not directing, by regulation, that a licensee comply with a prescribed drug and alcohol testing program. However, in fulfilling a licensee's responsibility for public safety, the FAA expects each licensee to employ appropriate safeguards against the hazards that could be created if persons impaired by use of alcohol or unlawful drugs are allowed to affect the safe conduct of licensed operations.

While a licensee is not responsible for policing federal employees or those of federal government contractors, a licensee, however, would be in violation of its safety responsibility under a license if it allowed licensed activity to proceed when the licensee knows or has reason to know that federal personnel, including contractor personnel, performing safety-critical functions are under the influence of alcohol or unlawful drugs.

Safety-critical, as defined in CFR 401.5 means ''essential to safe performance or operation. A safety-critical system, subsystem, condition, event, operation, process or item is one whose property recognition, control, performance or tolerance is essential to system operation such that it does not jeopardize public safety.'' A safety-critical function is one that is essential to safe performance or operation. A

safety-critical individual who performs safety-critical functions properly is essential to safe operations conducted under a license. In order to perform these safety-critical functions properly, a safety-critical individual must be in a mental state in which judgment is unimpaired by alcohol or unlawful drug usage, since their functions may include the ability to make time-critical decisions.

For commercial space launch operations, a safety-critical individual typically is part of a licensee's safety organization. For RLVs, safety-critical personnel also include the flight crew if they are part of a flight safety system. Crew who manage flight safety are responsible for ensuring that a launch vehicle does not pose a public safety threat. A typical safety-critical function would be initiation of a destruct command of a flight safety system, which, as defined in 14 CFR 401.5, is a system designed to limit or restrict the hazards to public health and safety and the safety of property presented by a launch or reentry vehicle in flight through controlled ending to vehicle flight. An employee performing this safety-critical function which impaired, either under the influence of alcohol or unlawful drugs, might, for instance, fail to actuate the flight safety system when the launch vehicle leaves the established flight safety limits. In this scenario, the vehicle or vehicle debris could impact a populated area, imposing an unacceptable risk to the public or property.

If a licensee were to allow an individual who performs safety-critical functions to perform those functions while under the influence of alcohol or unlawful drugs, the FAA would regard the licensee to be in violation of its safety responsibility under the license and FAA regulations. The FAA may commence appropriate enforcement action, including suspension of a license, a civil penalty action, or both, against the licensee.

Issued in Washington, DC, September 24, 2003.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 03–24611 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–123–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–56]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. 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.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 24, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15356.

Petitioner: Lufthansa Technik AG.

Section of 14 CFR Affected: 14 CFR 25.785(j).

Description of Relief Sought/Disposition: To provide relief from the handhold requirement of § 25.785(j). This exemption allows the installation of an interior arrangement that does not provide firm handholds for the Boeing Model 737–700 IGW airplane where the airplane is not operated for hire or offered for common carriage. *Grant, 09/03/2003, Exemption No.8124.*

Docket No.: FAA–2003–15585.

Petitioner: Midcoast Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 25.813(e).

Description of Relief Sought/Disposition: To provide relief from § 25.813(e) in order to allow installation of interior doors between passenger compartments on the Dassault Aviation airplane models Mystere Falcon 900 and Falcon 900EX. *Grant, 09/03/2003, Exemption No.8123.*

[FR Doc. 03–24600 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input to the Aviation Weather Technology Transfer (AWTT) Board

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: FAA will hold an informal public meeting to seek aviation weather user input. Details: October 7, 2003, Orange County Convention Center, 9800 International Drive, Orlando, FL 32819, 1:30 a.m. to 5 p.m. in rooms 307A and B. The objective of this meeting is to provide an opportunity for interested aviation weather users to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held in rooms 307A and B at The Orange County Convention Center, 9800 International Drive, Orlando, FL in conjunction with the National Business Aviation Association, Inc. (NBAA) 2003 Convention. Times: 1:30 p.m.–5 p.m. on October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Aerospace Weather Policy Division, ARS–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; e-mail: *debi.bacon@faa.gov.* Internet address: *http://www.debi.bacon@faa.gov.*

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development into operations. The Director of the Aerospace Weather Policy and Standards Staff, ARS–20, chairs the AWTT Board. The board is composed of stakeholders in Air Traffic Services, ATS; Regulation and Certification, AVR; and Research and Acquisitions, ARA in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, OS and Office of Science and Technology, OST in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the

readiness of weather research and development (R&D) products for experimental use, full operational use for meteorologists or full operational use for end users. The board's determinations will be based upon criteria in the following areas: Users needs; benefits; costs; risks; technical readiness; operational readiness and budget requirements.

The user interface process is designed to allow FAA to both report progress and receive feedback from industry users. Each AWTT board meeting will be preceded by a half-day industry review session approximately one month prior to each board meeting. These industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry review session intended to receive feedback on a weather R&D product that will be presented for consideration at the November 2003 AWTT Board meeting. The product to be considered is the Current Icing Potential—Alaska (CIP–AK).

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. This meeting is being held in conjunction with the NBAA Convention 2003. There is a charge to attend the NBAA convention; however, any person desiring to attend this informal meeting will be admitted by NBAA convention officials at no charge to this meeting only.

(c) FAA personnel present will conduct a briefing on how the AWTT system works and any changes made to the process in the last year. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the process that is not clear.

(d) FAA personnel will present a briefing on the specific product to be reviewed at the November 2003 AWTT Board Meeting. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the presentation that is not clear.

(e) Any person present may give feedback on the product to be presented. Feedback on the proposed product will be captured through discussion between FAA personnel and any persons attending the meeting. The meeting will not be formally recorded. However, informal tape recordings may be made of the presentations to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced. Any person attending may receive a copy of the written information upon request at the meeting.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to FAA personnel for up to seven (7) days after the close of the meeting.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures.
(b) Briefing on AWTT Process.
(c) Briefing on Weather Products.
(d) Request for User Input.
(e) Closing Comments.

* * * * *

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

David Whatley,

Director, Aerospace Weather Policy and Standards Staff.

[FR Doc. 03–24609 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–15651; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Extension of comment period for a notice of draft interpretations.

SUMMARY: This document extends the comment period on a notice setting forth two draft interpretations concerning how our standard on lamps, reflective devices, and associated equipment applies to replacement equipment. In response to petitions from the Transportation Safety Equipment Institute (TSEI) and the Truck Trailer Manufacturers Association (TTMA), the agency is extending the comment period from October 2, 2003 to October 31, 2003.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than October 31, 2003.

ADDRESSES: You may submit comments (identified by the docket number set forth above) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1]
- 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 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number. For detailed instructions on submitting comments, see the Submission of Comments heading of the Supplementary Information section of the Notice of Draft Interpretations (68 FR 42454, 42456; July 17, 2003). 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 Notices.

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

FOR FURTHER INFORMATION CONTACT: George Feygin, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–2992, Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the agency published a notice requesting comments on two draft interpretations in response to questions

[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

whether replacement lamps for the rear of a vehicle may have the reflex reflectors in a location that is inboard from that in the original lamps, and whether light source modifications are permissible for aftermarket lamps (68 FR 42454). The draft letters would be interpretations of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.*

We initially provided a comment period of 45 days, until September 2, 2003. Subsequently, in response to a petition from the Specialty Equipment Market Association (SEMA), we extended the comment period to October 2, 2003 (68 FR 51635, August 27, 2003).

NHTSA received two petitions requesting an additional extension of the comment period, to October 31, 2003. The petitioners are the Transportation Safety Equipment Institute (TSEI) and the Truck Trailer Manufacturers Association (TTMA).

TSEI stated that it and its members have devoted a substantial amount of time and effort to consideration of comments. However, that organization stated that it cannot complete its recommendations until its Fall 2003 membership meeting, which will be held on October 9 and 10. According to the petitioner, a large portion of time during this meeting has been reserved for discussion and development of TSEI's position on the agency's draft interpretations by its engineering committee. Thereafter, TSEI expects to complete and submit its comments. The petitioner stated that in order to afford it the opportunity to apply the resources available to it during the October 9 and 10 meeting to complete work on its response, it requests an additional extension of the comment period, until October 31, 2003.

TTMA stated that its Engineering Committee is scheduled to meet on October 14 and 15, and that the agency's notice of draft interpretation will be one of the topics discussed. That organization stated that any comment it makes would best be developed at that time and would include the views of the TTMA membership.

After considering the arguments raised by TSEI and TTMA, we have decided that it is in the public interest to extend the comment period from October 2, 2003 to October 31, 2003, pursuant to the petitioners' requests.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: 49 U.S.C. 30111; 49 CFR 501.8(d)(5).

Issued on September 24, 2003.

Stephen P. Wood,

Assistant Chief Counsel for Vehicle Safety Standards and Harmonization.

[FR Doc. 03–24580 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16206]

Notice of Receipt of Petition for Decision that Nonconforming 2000, 2001 and 2002 Jaguar S-Type Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000, 2001 and 2002 Jaguar S-Type passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000, 2001 and 2002 Jaguar S-Type passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is October 29, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2000, 2001 and 2002 Jaguar S-Type passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2000, 2001 and 2002 Jaguar S-Type passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared printed text from dealers and parts lists for both non-U.S. certified 2000, 2001 and 2002 Jaguar S-Type passenger cars and their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2000, 2001 and 2002 Jaguar S-Type passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000, 2001 and 2002 Jaguar S-Type passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence.* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Seat Anchorage Systems*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release.*

Additionally, the petitioner states that non-U.S. certified 2000, 2001 and 2002 Jaguar S-Type passenger car models comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with the U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front side marker lights; (b) installation of U.S.-model taillamp assemblies and rear side marker lights.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* reprogramming the vehicle to actuate the ignition key warning function.

Standard No. 208 *Occupant Crash Protection:* Loading U.S. specification software to add the required seat belt warning light functions.

The petitioner states that a vehicle identification plate must be affixed to the vehicle near the left windshield to meet the requirements of 49 CFR part 565.

Lastly, the petitioner states that a certification label will be affixed to the driver's side doorjamb to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Compliance with the Theft Prevention Standard in 49 CFR part 541 is not required because the vehicle line has not been designated as line subject to this standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 23, 2003.

Kathleen DeMeter,

Director, Office of Defects Investigation.

[FR Doc. 03–24578 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–56–87 and IA–53–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–56–87 and IA–53–87 (TD 8416), Minimum Tax-Tax Benefit Rule (§§ 1.58–9(c)(5)(iii)(B), and 1.58–9(e)(3)).

DATES: Written comments should be received on or before November 28, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 regulation should be directed to Larnice Mack at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87.

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

The following paragraph applies to all of the collections of 1information 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: September 22, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24597 Filed 9–26–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 11–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 11–C, Occupational Tax and Registration Return for Wagering.

DATES: Written comments should be received on or before November 28, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Occupational Tax Wagering.

OMB Number: 1545–0236.

Form Number: 11–C.

Abstract: Form 11–C is used to register persons accepting wages, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411, and to verify that the tax on wagers is reported on Form 730, Tax on Wagering.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 11,500.

Estimated Time Per Respondent: 10 hours., 4 minutes.

Estimated Total Annual Burden Hours: 123,050.

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: September 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24598 Filed 9–26–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6118

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6118, Claim of Income Tax Return Preparer Penalties.

DATES: Written comments should be received on or before November 28, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim of Income Tax Return Preparer Penalties.

OMB Number: 1545–0240.

Form Number: 6118.

Abstract: Form 6118 is used by tax return preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hr., 2 minutes.

Estimated Total Annual Burden Hours: 10,400.

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: September 22, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24599 Filed 9–26–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–254–0473; email at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 10/349,698 ''Tracheostomy Aspiration Suction Tube''.

Dated: September 16, 2003.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 03–24435 Filed 9–26–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
September 29, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2003–04 season.

DATES: This rule is effective on September 27, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2003–04 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 18–19, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations. In the August 27, 2003, **Federal Register** (68 FR 51658), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2003–04 early-season hunting dates, hours, areas, and limits. Subsequently, on August 28, 2003, we published a final rule in the **Federal Register** (68 FR 51832) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. On August 19, 2003, we published in the **Federal Register** (68 FR 50016) the proposed frameworks for the 2003–04 late-season migratory bird hunting regulations. We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2003–04 in a September 26, 2003, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2003–04 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES.** Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon

request from the address indicated under **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we plan to use the exemption contained in 5 U.S.C. 808 (1) to make the rule effective on the date set forth in **DATES.**

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act (MBTA). Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for

which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 23, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

BILLING CODE 4310–55–P

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.101 paragraph (a) is revised to read as follows:

* * * * *

(a) Puerto Rico

	Season Dates	Limits Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 6-Nov. 3	15	15
Scaly-naped pigeons	Sept. 6-Nov. 3	5	5
Ducks	Nov. 15-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Moorhens	Nov. 15-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Snipe	Nov. 15-Dec. 22 &	8	16
	Jan. 10-Jan. 26	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the July 17, 2003, Federal Register (68 FR 42546).

* * * * *

3. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 27, 2003, (68 FR 51658) and the September Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

* * * * *

Maine	Sept. 1-Nov. 8	Closed	Oct. 1-Oct. 25 & Oct. 27-Oct. 31	Sept. 1-Dec. 16

* * * * *

Massachusetts (4)	Sept. 1-Nov. 8	Closed	Oct. 16-Oct. 25 & Oct. 27-Nov. 15	Sept. 1-Dec. 15

* * * * *

Vermont	Closed	Closed	Oct. 4-Nov. 2	Oct. 11-Dec. 20

* * * * *

MISSISSIPPI FLYWAY

* * * * *

Louisiana	Sept. 13-Sept. 28 & Nov. 8-Dec. 31	Sept. 13-Sept. 28 & Nov. 8-Dec. 31	Dec. 18-Jan. 31	Nov. 14-Feb. 28

* * * * *

Tennessee				
Reelfoot Zone	Nov. 27-Jan. 20	Closed	Oct. 25-Dec. 8	Nov. 15-Feb. 28
State Zone	Nov. 27-Jan. 20	Clo sed	Oct. 25-Dec. 8	Nov. 15-Feb. 28
Wisconsin				
North Zone	Sept. 27-Nov. 25	Closed	Sept. 20-Nov. 3	Sept. 27-Nov. 25
South Zone	Oct. 4-Oct. 12 & Oct. 18-Dec. 7	Closed	Sept. 20-Nov. 3	Oct. 4-Oct. 12 & Oct. 18-Dec. 7

* * * * *

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
CENTRAL FLYWAY				
		* * * * *		
New Mexico (16)	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
		* * * * *		
PACIFIC FLYWAY				
Arizona (17)				
North Zone	Closed	Closed	Closed	Oct. 17-Jan. 25
South Zone	Closed	Closed	Closed	Oct. 17-Jan. 25
California	Closed	Closed	Closed	Oct. 18-Feb. 1
		* * * * *		
Idaho				
Zone 1 & 2	Closed	Closed	Closed	Oct. 4-Jan. 16
Zones 3	Closed	Closed	Closed	Oct. 11-Jan. 23
		* * * * *		
Nevada				
Clark County	Closed	Closed	Closed	Oct. 11-Oct. 15 & Oct. 17-Jan. 25
Rest of State	Closed	Closed	Closed	Oct. 11-Oct. 15 & Oct. 17-Jan. 25
New Mexico(16)	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
		* * * * *		
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 11-Nov. 28 & Dec. 27-Feb. 22
Zone 2	Closed	Closed	Closed	Oct. 11-Nov. 28 & Dec. 27-Feb. 22
Utah	Closed	Closed	Closed	Oct. 4-Jan. 17
		* * * * *		

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Washington				
East Zone	Closed	Closed	Closed	Oct. 11-Oct. 15 & Oct. 18-Jan. 25
West Zone	Closed	Closed	Closed	Oct. 11-Oct. 15 & Oct. 18-Jan. 25

* * * * *

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

* * * * *

(4) In Massachusetts, the sora daily limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

* * * * *

(16) In New Mexico, the rail daily bag and possession limits are 10 and 20, respectively.
(17) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

4. In Section 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 27 (68 FR 51658) and the September Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 22-Nov. 30 &	15	30
	Dec. 6-Jan. 20		
	* * * * *		
Virginia	Oct. 8-Oct. 11 &	15	30
	Nov. 15-Dec. 6 &	15	30
	Dec. 13-Jan. 20	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 11 &	15	30
	Dec. 4-Jan. 20	15	30
Zone 2	Oct. 1-Oct. 11 &	15	30
	Nov. 17-Jan. 3	15	30
	* * * * *		
MISSISSIPPI FLYWAY			
	* * * * *		
Louisiana	Sept. 13-Sept. 28 &	15	30
	Nov. 8-Dec. 31	15	30
Michigan			
North Zone	Sept. 27-Nov. 25	15	30
Middle Zone	Oct. 4-Nov. 30 &	15	30
	Jan. 3-Jan. 4	15	30
South Zone	Oct. 11-Dec. 7 &	15	30
	Jan. 3-Jan. 4	15	30
Minnesota (2)	Sept. 27-Nov. 25	15	30
	* * * * *		
Tennessee			
Reelfoot Zone	Nov. 27-Jan. 18	15	30
State Zone	Nov. 27-Jan. 18	15	30
Wisconsin			
North Zone	Sept. 27-Nov. 25	10	20
South Zone	Oct. 4-Oct. 12 &	10	20
	Oct. 18-Dec. 7		
	* * * * *		

	Season Dates	Limits Bag	Limits Possession
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Georgia	Nov. 22-Nov. 30 &	15	30
	Dec. 6-Jan. 25	15	30
	* * * * *		
Maine (1)	Oct. 1-Jan. 31	7	14
Maryland	Oct. 4-Jan. 24	5	10
Massachusetts (2)	Oct. 6-Jan. 20	7	14
	* * * * *		
North Carolina	Oct. 1-Jan. 24	7	14
	* * * * *		
South Carolina	Oct. 6-Jan. 20	7	14
Virginia	Oct. 8-Jan. 24	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Maine, the daily bag limit for eiders is 5, possession 10.

(2) In Massachusetts, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits	
		Bag	Possession
Connecticut			
Ducks:		6	12
North Zone:			
Canvasbacks	Dec. 8-Jan. 10		
Pintails	Oct. 8-Oct. 18 & Nov. 14-Dec. 6		
Other ducks	Oct. 8-Oct. 18 & Nov. 14-Jan. 10		

	Season Dates	Limits Bag	Possession
Connecticut (cont.)			
South Zone:			
Canvasbacks	Dec. 22-Jan. 24		
Pintails	Oct. 8-Oct. 15 &		
	Nov. 25-Dec. 20		
Other ducks	Oct. 8-Oct. 15 &		
	Nov. 25-Jan. 24		
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
NAP Zone:			
L-Unit	Oct. 1-Oct. 31 &	3	6
	Nov. 26-Jan. 14	3	6
H-Unit			
North Zone	Oct. 1-Oct. 18 &	2	4
	Nov. 25-Jan. 14	2	4
South Zone	Oct. 1-Oct. 18 &	2	4
	Nov. 25-Jan. 14	2	4
(special season)	Jan. 15-Feb. 14	5	10
AP Unit	Nov. 1-Nov. 8 &	2	4
	Nov. 21-Jan. 3	2	4
Light Geese:			
North Zone	Oct. 10-Feb. 7	15	--
South Zone	Oct. 10-Feb. 7	15	--
Brant:			
North Zone	Nov. 3-Jan. 10	3	6
South Zone	Nov. 17-Jan. 24	3	6
Delaware			
Ducks :		6	12
Canvasbacks	Dec. 12-Jan. 15		
Pintails	Oct. 1-Oct. 4 &		
	Oct. 31-Nov. 11 &		
	Nov. 24-Dec. 11		
Other ducks (1)	Oct. 1-Oct. 4 &		
	Oct. 31-Nov. 11 &		
	Nov. 24-Jan. 15		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 24-Dec. 6 &	1	2
	Dec. 9-Jan. 15	1	2
Light Geese:			
Bombay Hook NWR Zone (2)	Oct. 3-Jan. 16 &	15	--
	Feb. 2-Mar. 5	15	–
Rest of State (3)	Oct. 1-Nov. 12 &	15	–
	Nov. 24-Jan. 16	15	-
	Jan. 31-Mar. 10	15	-
Brant	Nov. 17-Jan. 24	3	6

	Season Dates	Limits Bag	Limits Possession
Florida			
Ducks:		6	12
Canvasbacks	Nov. 22-Nov. 30 & Dec. 6-Dec. 26		
Pintails	Nov. 22-Nov. 30 & Dec. 6-Dec. 26		
Other ducks	Nov. 22-Nov. 30 & Dec. 6-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (4)	Nov. 22-Jan. 30	5	10
Light Geese (5)	Nov. 22-Nov. 30 &	15	--
	Dec. 6-Jan. 25	15	--
Georgia			
Ducks:		6	12
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 22-Nov. 30 & Dec. 6-Jan. 25		
Mergansers	Nov. 22-Nov. 30 &	5	10
	Dec. 6-Jan. 25	5	10
Coots	Nov. 22-Nov. 30 &	15	30
	Dec. 6-Jan. 25	15	30
Canada Geese (special season)	Nov. 22-Nov. 30 &	3	6
	Dec. 6-Jan. 31	3	6
Light Geese	Same as for Canada geese	2	4
Brant	Closed	--	--
Maine			
Ducks (6):		4	8
North Zone:			
Canvasbacks	Oct. 1-Nov. 4		
Pintails	Oct. 1-Nov. 4		
Other ducks	Oct. 1-Dec. 9		
South Zone:			
Canvasbacks	Oct. 1-Oct. 18 & Nov. 3-Nov. 18		
Pintails	Oct. 1-Oct. 18 & Nov. 3-Nov. 18		
Other ducks	Oct. 1-Oct. 18 & Nov. 3-Dec. 23		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	5	10
Canada Geese:			
North Zone	Oct. 1-Dec. 9	2	4
South Zone	Oct. 1-Oct. 31 &	2	4
	Nov. 15-Dec. 23	2	4
Light Geese	Oct. 1-Jan. 31	15	--
Brant	Oct. 1-Dec. 9	3	6

	Season Dates	Limits Bag	Limits Possession
Maryland			
Ducks (7):		5	10
Canvasbacks	Dec. 22-Jan. 24		
Pintails	Oct. 25-Nov. 1 &		
	Dec. 30-Jan. 24		
Other ducks	Oct. 25-Nov. 1 &		
	Nov. 8-Nov. 28 &		
	Dec. 16-Jan. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
RP Zone	Nov. 15-Nov. 28 &	5	10
	Dec. 10-Feb. 14	5	10
AP Zone	Nov. 15-Nov. 28 &	1	2
	Dec. 18-Jan. 24	1	2
Light Geese (8)	Oct. 18-Nov. 28 &	15	--
	Dec. 6-Jan. 31 &	15	--
	Feb. 2-Mar. 10	15	--
Brant	Nov. 8-Nov. 28 &	3	6
	Dec. 3-Jan. 20	3	6
Massachusetts			
Ducks (9):		6	12
Western Zone:			
Canvasbacks	Oct. 14-Nov. 17		
Pintails	Oct. 14-Nov. 17		
Other ducks	Oct. 14-Dec. 22		
Central Zone:			
Canvasbacks	Oct. 15-Nov. 18		
Pintails	Oct. 15-Nov. 18		
Other ducks	Oct. 15-Nov. 29 &		
	Dec. 19-Jan. 10		
Coastal Zone:			
Canvasbacks	Oct. 15-Oct. 25 &		
	Nov. 21-Dec. 13		
Pintails	Oct. 15-Oct. 25 &		
	Nov. 21-Dec. 13		
Other ducks	Oct. 15-Oct. 25 &		
	Nov. 21-Jan. 17		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
NAP Zone			
Central Zone:	Oct. 15-Nov. 29 &	2	4
	Dec. 19-Jan. 10	2	4
(special season)	Jan. 19-Feb. 14	2	4
Coastal Zone:	Oct. 15-Oct. 25 &	2	4
	Nov. 21-Jan. 17	2	4
(special season)	Jan. 19-Feb. 14	5	10
AP Zone	Oct. 25-Dec. 16	1	2

	Season Dates	Limits Bag	Limits Possession
Massachusetts (cont.)			
Light Geese:			
Western Zone	Same as for ducks	15	30
Central Zone	Same as for ducks &	15	30
	Jan. 19-Feb. 14	15	30
Coastal Zone	Same as for ducks &	15	30
	Jan. 19-Feb. 14	15	30
Brant:			
Western & Central Zone	Closed	--	--
Coastal Zone	Nov. 10-Jan. 17	2	4
New Hampshire			
Ducks :		6	12
Inland Zone:			
Canvasbacks	Nov. 26-Dec. 21		
Pintails	Oct. 7-Nov. 5		
Other ducks	Oct. 7-Nov. 9 &		
	Nov. 26-Dec. 21		
Coastal Zone:			
Canvasbacks	Nov. 26-Dec. 25		
Pintails	Oct. 8-Oct. 19 &		
	Nov. 26-Dec. 13 &		
Other ducks	Oct. 8-Oct. 19 &		
	Nov. 26-Jan. 12		
Mergansers	Same as ducks	5	10
Coots	Same as ducks	15	30
Canada Geese:			
Inland Zone	Oct. 7-Nov. 9 &	2	4
	Nov. 26-Dec. 21	2	4
Coastal Zone	Oct. 8-Oct. 19 &	2	4
	Nov. 26-Jan. 12	2	4
Light Geese:			
Inland Zone	Oct. 7-Dec. 21	15	--
Coastal Zone	Oct. 8-Jan. 12	15	–
Brant:			
Inland Zone	Oct. 7-Nov. 9 &	3	6
	Nov. 26-Dec. 21	3	6
Coastal Zone	Oct. 8-Oct. 19 &	3	6
	Nov. 26-Jan. 12	3	6
New Jersey			
Ducks (10):		6	12
North Zone:			
Canvasbacks	Nov. 28-Jan. 1		
Pintails	Nov. 15-Nov. 29 &		
	Dec. 13-Jan. 1		
Other ducks	Oct. 11-Nov. 1 &		
	Nov. 15-Jan. 1		
South Zone:			
Canvasbacks	Nov. 22-Nov. 29 &		
	Dec. 16-Jan. 10		

	Season Dates	Limits Bag	Limits Possession
New Jersey (cont.)			
Pintails	Oct. 18-Oct. 25 & Nov. 4-Nov. 29		
Other ducks	Oct. 18-Nov. 29 & Dec. 18-Jan. 10		
Coastal Zone:			
Canvasbacks	Dec. 22-Jan. 24		
Pintails	Nov. 1-Nov. 11 & Dec. 11-Jan. 3		
Other ducks	Nov. 1-Nov. 11 & Nov. 27-Jan. 24		
Mergansers	Same as ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
North Zone	Nov. 15-Nov. 29 &	2	4
	Dec. 19-Jan. 24	2	4
South Zone	Nov. 22-Dec. 3 &	2	4
	Dec. 16-Jan. 24	2	4
Coastal Zone	Nov. 27-Dec. 6 &	2	4
	Dec. 15-Jan. 24	2	4
(special season)	Jan. 26-Feb. 14	5	10
Light Geese:			
North Zone	Oct. 11-Feb. 12	15	--
South Zone	Oct. 18-Oct. 25 &	15	–
	Nov. 15-Mar. 10	15	--
Coastal Zone	Oct. 2-Feb. 3	15	--
Brant:			
North Zone	Same as for Other ducks	3	6
South Zone	Same as for Other ducks	3	6
Coastal Zone	Same as for Other ducks	3	6
New York			
Ducks:		6	12
Long Island Zone:			
Canvasbacks	Dec. 7-Jan. 5		
Pintails	Nov. 21-Nov. 30 & Dec. 7-Dec. 26		
Other ducks	Nov. 21-Nov. 30 & Dec. 7-Jan. 25		
Lake Champlain Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Pintails	Oct. 11-Oct. 13 & Oct. 25-Nov. 20		
Other ducks	Oct. 11-Oct. 13 & Oct. 25-Dec. 20		
Northeastern Zone:			
Canvasbacks	Nov. 3-Nov. 15 & Nov. 27-Dec. 13		
Pintails	Oct. 4-Nov. 2		
Other ducks	Oct. 4-Nov. 15 & Nov. 27-Dec. 13		

	Season Dates	Limits Bag	Limits Possession
New York (cont.)			
Southeastern Zone:			
Canvasbacks	Nov. 29-Dec. 28		
Pintails	Oct. 11-Oct. 19 &		
	Nov. 8-Nov. 28		
Other ducks	Oct. 11-Oct. 19 &		
	Nov. 8-Dec. 28		
Western Zone:			
Canvasbacks	Nov. 17-Dec. 2 &		
	Dec. 27-Jan. 9		
Pintails	Oct. 18-Nov. 16		
Other ducks	Oct. 18-Dec. 2 &		
	Dec. 27-Jan. 9		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Western Long Island (NAP)	Nov. 21-Jan. 29	3	6
Eastern Long Island (NAP)	Nov. 21-Nov. 30 &	2	4
	Dec. 7-Jan. 25	2	4
Lake Champlain (AP) Zone	Oct. 25-Dec. 8	2	4
Saint Lawrence (RP) Zone	Oct. 25-Jan. 2	5	10
Northeast (AP) Zone	Oct. 25-Nov. 16 &	2	4
	Nov. 22-Dec. 13	2	4
East Central (AP) Zone	Nov. 1-Nov. 16 &	2	4
	Nov. 30-Dec. 28	2	4
West Central (AP) Zone	Oct. 25-Nov. 16 &	2	4
	Dec. 27-Jan. 17	2	4
Southwest (SJBP) Zone	Oct. 25-Jan. 2	2	4
South Central (RP)	Oct. 25-Jan. 2	5	10
(special season)	Feb. 7-Feb. 12	5	10
Light Geese:			
Long Island Zone	Oct. 4-Oct. 22 &	15	--
	Nov. 21-Nov. 30 &	15	--
	Dec. 24-Mar. 10	15	--
Lake Champlain Zone	Oct. 11-Dec. 31 &	15	--
Northeastern Zone	Oct. 4-Jan. 3 &	15	--
	Feb. 25-Mar. 10	15	--
Southeastern Zone	Oct. 11-Jan. 10 &	15	--
	Feb. 25-Mar. 10	15	--
Western Zone	Oct. 18-Jan. 17 &	15	--
	Feb. 25-Mar. 10	15	--
Brant:			
Long Island Zone	Nov. 21-Nov. 30 &	3	6
	Dec. 7-Jan. 25	3	6
Lake Champlain Zone	Oct. 11-Dec. 9	3	6
Northeastern Zone	Oct. 4-Dec. 2	3	6
Southeastern Zone	Oct. 11-Dec. 9	3	6
Western Zone	Oct. 11-Dec. 9	3	6

	Season Dates	Limits Bag	Limits Possession
North Carolina			
Ducks (11):		6	12
Canvasbacks	Dec. 22-Jan. 24		
Pintails	Dec. 22-Jan. 24		
Other ducks	Oct. 1-Oct. 4 &		
	Nov. 8-Nov. 29 &		
	Dec. 13-Jan. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Nov. 8-Nov. 29 &	5	10
	Dec. 13-Jan. 24	5	10
Southern James Bay Hunt Zone	Oct. 13-Oct. 25 &	2	4
	Nov. 15-Dec. 31	2	4
Northeast Hunt Zone	Closed		
Light Geese	Oct. 21-Oct. 31 &	15	--
	Nov. 15-Mar. 6	15	--
Brant	Nov. 24-Jan. 31	3	6
Pennsylvania			
Ducks:		6	12
North Zone:			
Canvasbacks	Nov. 15-Dec. 19		
Pintails	Oct. 11-Oct. 25 &		
	Nov. 15-Dec. 4		
Other ducks	Oct. 11-Oct. 25 &		
	Nov. 15-Jan. 8		
South Zone:			
Canvasbacks	Nov. 15-Dec. 19		
Pintails	Oct. 11-Oct. 18 &		
	Nov. 15-Dec. 11		
Other ducks	Oct. 11-Oct. 18 &		
	Nov. 15-Jan. 15		
Northwest Zone:			
Canvasbacks	Nov. 21-Dec. 25		
Pintails	Oct. 11-Oct. 25 &		
	Nov. 1-Nov. 20		
Other ducks	Oct. 11-Oct. 25 &		
	Nov. 1-Dec. 25		
Lake Erie Zone:			
Canvasbacks	Dec. 2-Jan. 5		
Pintails	Dec. 2-Jan. 5		
Other ducks	Oct. 27-Nov. 1 &		
	Nov. 4-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 15-Nov. 29 &	2	4
	Dec. 15-Jan. 20	2	4
(late season area)	Nov. 15-Nov. 29 &	5	10
	Dec. 9-Jan. 14	5	10

	Season Dates	Limits Bag	Limits Possession
Pennsylvania (cont.)			
SJBP Zone	Nov. 15-Dec. 31	2	4
(special season)	Jan. 15-Feb. 14	5	10
Pymatuning Zone	Nov. 15-Dec. 25	1	2
Resident (RP) Zone	Nov. 15-Nov. 29 &	5	10
	Dec. 11-Feb. 14	5	10
Special Late Season (portion of AP Zone)	Jan. 15-Feb. 14	5	10
Light Geese	Nov. 7-Mar. 10	15	--
Brant	Oct. 11-Dec. 19	3	6
Rhode Island			
Ducks:		6	12
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Oct. 10-Oct. 13 & Nov. 26-Nov. 30 & Dec. 6-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 22-Nov. 30 &	2	4
	Dec. 6-Jan. 25	2	4
(special season)	Jan. 30-Feb. 15	5	10
Light Geese	Oct. 11-Jan. 25	15	--
Brant	Nov. 22-Nov. 30 &	2	4
	Dec. 6-Jan. 25	2	4
South Carolina			
Ducks (12):		6	12
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Nov. 26-Nov. 30 & Dec. 12-Jan. 5		
Other ducks	Nov. 26-Nov. 30 & Dec. 12-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (special season)	Nov. 26-Nov. 30 &	5	10
	Dec. 12-Feb. 14	5	10
Light Geese	Same as for ducks	5	10
Brant	Dec. 12-Jan. 25	3	6
Vermont			
Ducks:		6	12
Lake Champlain Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Pintails	Oct. 11-Oct. 13 & Oct. 25-Nov. 20		
Other ducks	Oct. 11-Oct 13 & Oct. 25-Dec. 20		
Interior Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Pintails	Oct. 11-Nov. 9		

	Season Dates	Limits Bag	Limits Possession
Vermont (cont.)			
Other ducks	Oct. 11-Dec. 9		
Connecticut River Zone:			
Canvasbacks	Nov. 26-Dec. 21		
Pintails	Oct. 7-Nov. 5		
Other ducks	Oct. 7-Nov. 9 &		
	Nov. 26-Dec. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese			
Lake Champlain Zone:	Oct. 25-Dec. 8	2	4
Interior Zone:	Oct. 25-Dec. 8	2	4
Connecticut River Zone:	Oct. 7-Nov. 9 &	2	4
	Nov. 26-Dec. 21	2	4
Light Geese			
Lake Champlain Zone:	Oct. 11-Dec. 31	15	–
Interior Zone:	Oct. 11-Dec. 31	15	–
Connecticut River Zone:	Oct. 7-Dec. 21	15	–
Brant			
Lake Champlain Zone:	Oct. 11-Dec. 9	3	6
Interior Zone:	Oct. 11-Dec. 9	3	6
Connecticut River Zone:	Oct. 7-Nov. 9 &	3	6
	Nov. 26-Dec. 21	3	6
Virginia			
Ducks (13):		5	10
Canvasbacks	Dec, 22-Jan. 24		
Pintails	Dec. 22-Jan. 24		
Other ducks	Oct. 8-Oct. 11 &		
	Nov. 15-Dec. 6 &		
	Dec. 13-Jan. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Back Bay Area	Closed	--	--
Eastern (AP) Zone	Nov. 22-Dec. 1 &	1	2
	Dec. 13-Jan. 24	1	2
Western (SJBP) Zone	Nov. 24-Dec. 6 &	2	4
	Dec. 13-Jan. 14	2	4
Western (RP) Zone	Nov. 24-Dec. 6 &	2	4
	Dec. 13-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	5	10
Light Geese	Nov. 7-Mar. 10	15	--
Brant	Nov. 15-Dec. 6 &	3	6
	Dec. 13-Jan. 24	3	6
West Virginia			
Ducks (14):		6	12
Zone 1:			
Canvasbacks	Dec. 22-Jan. 20		

	Season Dates	Limits Bag	Limits Possession
West Virginia (cont.)			
Pintails	Dec. 22-Jan. 20		
Other ducks	Oct. 1-Oct. 11 & Dec. 4-Jan. 20		
Zone 2:			
Canvasbacks	Dec. 5-Jan. 3		
Pintails	Dec. 5-Jan. 3		
Other ducks	Oct. 1-Oct. 11 & Nov. 17-Jan. 3		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 11 &	3	6
	Dec. 4-Jan. 31	3	6
Zone 2	Oct. 1-Oct. 25 &	3	6
	Dec. 18-Jan. 31	3	6
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant	Same as for Other ducks	3	6

(1) In Delaware, the black duck season is open November 24 to January 15 with a daily bag limit of 1.
(2) In Delaware, the February 9 to March 5 Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
(3) In Delaware, the January 31 to March 10 Rest of State snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(4) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR2, north of the Jim Woodruff Dam, and east of SR271.
(5) In Florida, the light goose season is only open north and west of the Suwannee River.
(6) In Maine, the season is closed for black ducks October 1 through October 3; in addition to the daily bag limit, 2 additional teal may be taken. A possession limit of 12 ducks is permitted provided it includes 4 or more teal.
(7) In Maryland, the black duck season is closed October 25 through November 1. In addition to the daily bag limit, 1 additional teal may be taken.
(8) In Maryland, the February 2 to March 10 snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(9) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
(10) In New Jersey, the daily bag limit for buffleheads is 6.
(11) In North Carolina, the season is closed for black ducks October 1 through October 4 and November 8 through November 29. The daily bag limit for Black and Mottled ducks are combined with no more than 1 of either sex allowed in the bag.
(12) In South Carolina, the daily bag limit of 6 may not exceed 1 female mallard and 1 black duck or 1 mottled duck in the aggregate.
(13) In Virginia, the season is closed for black ducks October 8 through October 11.
(14) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:		6	12
North Zone:			
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
South Zone:			
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 13-Jan. 31	2	4
Rest of North Zone	Sept. 27-Sept. 30 &	2	4
	Nov. 27-Jan. 31	2	4
South Zone	Sept. 27-Sept. 30 &	2	4
	Nov. 27-Jan. 31	2	4
Light Geese	Same as for Dark Geese	5	5
Arkansas			
Ducks (1):		6	12
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Nov. 22-Nov. 30 & Jan. 5-Jan. 25		
Other ducks	Nov. 22-Dec. 7 & Dec. 12-Dec. 24 & Dec. 26-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Northwest Zone	Oct. 4-Oct. 13 &	2	4
	Jan. 8-Jan. 30	2	4
Remainder of State	Jan. 8-Jan. 30	2	4

	Season Dates	Limits Bag	Limits Possession
Arkansas (cont.)			
White-fronted	Nov. 6-Jan. 30	2	4
Brant	Closed	--	--
Light Geese	Nov. 6-Jan. 30	20	--
Illinois			
Ducks (1):		6	12
North Zone:			
Canvasbacks	Oct. 16-Nov. 14		
Pintails	Oct. 16-Nov. 14		
Other ducks	Oct. 16-Dec. 14		
Central Zone:			
Canvasbacks	Oct. 23-Nov. 21		
Pintails	Oct. 23-Nov. 21		
Other ducks	Oct. 23-Dec. 21		
South Zone:			
Canvasbacks	Nov. 20-Dec. 19		
Pintails	Nov. 20-Dec. 19		
Other ducks	Nov. 20-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (2):			
North Zone:			
Northern Illinois:			
Quota Zone (2)	Oct. 16-Jan. 13	2	10
Rest of North Zone	Oct. 16-Jan. 13	2	10
Central Zone:			
Central Illinois:			
Quota Zone (2)	Oct. 23-Oct. 26 &	2	10
	Nov. 7-Jan. 31	2	10
Rest of Central Zone	Oct. 23-Oct. 26 &	2	10
	Nov. 7-Jan. 31	2	10
South Zone:			
Southern Illinois:			
Quota Zone (2)(3)	Nov. 20-Nov. 23 &	2	10
	Dec. 6-Jan. 31	2	10
Rest of South Zone	Nov. 20-Nov. 23 &	2	10
	Dec. 6-Jan. 31	2	10
White-fronted (4):			
North Zone	Oct. 16--Jan. 13	1	2
Central Zone	Oct. 23-Jan. 31	1	2
South Zone	Nov. 20-Jan. 31	2	4
Brant (4)	Same as for Light Geese	1	2
Light Geese (4):			
North Zone	Oct. 16-Jan. 13	20	--
Central Zone	Oct. 23-Jan. 31	20	–
South Zone	Nov. 20-Jan. 31	20	–

	Season Dates	Limits Bag	Limits Possession
Indiana			
Ducks:		6	12
North Zone:			
Canvasbacks	Oct. 25-Nov. 23		
Pintails	Oct. 25-Nov. 23		
Other ducks	Oct. 11-Oct. 13 &		
	Oct. 25-Dec. 20		
South Zone:			
Canvasbacks	Nov. 22-Dec. 21		
Pintails	Nov. 22-Dec. 21		
Other ducks	Oct. 25-Oct. 31 &		
	Nov. 22-Jan. 13		
Ohio River Zone:			
Canvasbacks	Nov. 22-Dec. 21		
Pintails	Nov. 22-Dec. 21		
Other ducks	Oct. 25-Oct. 26 &		
	Nov. 22-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
SJBP Area	Oct. 11-Oct. 13 &	2	4
	Oct. 25-Dec. 10	2	4
Rest of North Zone	Oct. 11-Oct. 13 &	2	4
	Oct. 25-Dec. 30	2	4
South Zone:	Nov. 8-Nov. 11 &	2	4
	Nov. 27-Jan. 31	2	4
Ohio River Zone:	Nov. 23-Jan. 31	2	4
White-fronted and Brant	Oct. 11-Oct. 13 &	1	2
	Oct. 22-Jan. 31	1	2
Light Geese	Oct. 11-Oct. 13 &	20	–
	Oct. 22-Jan. 31	20	--
Iowa			
Ducks:		6	12
North Zone:			
Canvasbacks	Oct. 18-Nov. 16		
Pintails	Sept. 20-Sept. 24 &		
	Oct. 11-Nov. 4		
Other ducks	Sept. 20-Sept. 24 &		
	Oct. 11-Dec. 4		
South Zone:			
Canvasbacks	Oct. 25-Nov. 23		
Pintails	Sept. 20-Sept. 22 &		
	Oct. 18-Nov. 13		
Other ducks	Sept. 20-Sept. 22 &		
	Oct. 18-Dec. 13		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Iowa (cont.)			
Geese:			
Canada:			
North Zone	Sept. 27-Dec. 5	2	4
South Zone	Sept. 27-Oct. 19 &	2	4
	Nov. 8-Dec. 24	2	4
White-fronted:			
North Zone	Sept. 27-Dec. 21	2	4
South Zone	Sept. 27-Dec. 21	2	4
Brant:			
North Zone	Same as for Canada geese	2	4
South Zone	Same as for Canada geese	2	4
Light Geese	Sept. 27-Jan. 11	20	--
Kentucky			
Ducks:		6	12
West Zone:			
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
East Zone:			
Canvasbacks	Dec. 27-Jan.25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
Mergansers	Same as for Other Ducks	5	10
Coots	Same as for Other Ducks	15	30
Geese:			
Canada (2):			
Western Goose Zone (2):			
Fulton County	Dec. 6-Feb. 15	2	4
Rest of Zone	Dec. 6-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Dec. 13-Jan. 31	2	4
Rest of State	Dec. 13-Jan. 31	2	4
White-fronted	Nov. 27-Feb. 1	2	4
Brant	Nov. 27-Feb. 1	2	4
Light Geese			
Western Goose Zone:			
Fulton County (5):	Nov. 27-Feb. 15	20	–
Rest of Zone:	Nov. 27-Feb. 1	20	–
Rest of State	Nov. 27-Feb. 1	20	–
Louisiana			
Ducks:		6	12
West Zone:			
Canvasbacks	Dec. 20-Jan. 18		
Pintails	Nov. 8-Nov. 30 &		
	Dec. 13-Dec. 19		
Other ducks	Nov. 8-Nov. 30 &		
	Dec. 13-Jan. 18		
East Zone (including Catahoula Lake):			
Canvasbacks	Dec. 27-Jan. 25		

	Season Dates	Limits Bag	Limits Possession
Louisiana (cont.)			
Pintails	Nov. 15-Nov. 30 &		
	Dec. 13-Dec. 26		
Other ducks	Nov. 15-Nov. 30 &		
	Dec. 13-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (6)	Jan. 17-Jan. 25	1	2
White-fronted and Brant:	Nov. 1-Nov. 30 &	2	4
	Dec. 13-Feb. 6	2	4
Light Geese:	Nov. 1-Nov. 30 &	20	–
	Dec. 13-Feb. 6	20	--
Michigan			
Ducks (7):		6	12
North Zone:			
Canvasbacks	Oct. 27-Nov. 25		
Pintails	Sept. 27-Oct. 26		
Other ducks	Sept. 27-Nov. 25		
Middle Zone:			
Canvasbacks	Nov. 3-Nov. 30 &		
	Jan. 3-Jan. 4		
Pintails	Oct. 4-Nov. 2		
Other ducks	Oct. 4-Nov. 30 &		
	Jan. 3-Jan. 4		
South Zone:			
Canvasbacks	Nov. 10-Dec. 7 &		
	Jan. 3-Jan. 4		
Pintails	Oct. 11-Nov. 9		
Other ducks	Oct. 11-Dec. 7 &		
	Jan. 3-Jan. 4		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (2):			
MVP Zone:			
Muskegon Wastewater Goose Management Unit (GMU) (2)	Oct. 16-Nov. 14 &	2	4
	Dec. 2-Dec. 21	2	4
Allegan County GMU (2)	Nov. 1-Nov. 9 &	1	2
	Dec. 13-Jan. 22	1	2
Rest of MVP Zone	Sept. 20-Nov. 6 &	2	4
	Dec. 13-Dec. 19	2	4
SJBP Zone:			
Saginaw County GMU (2)	Oct. 11-Nov. 29	1	2
Tuscola/Huron GMU (2)	Oct. 11-Nov. 29	1	2
Rest of SJBP Zone	Sept. 20-Oct. 12 &	2	4
	Dec. 13-Dec. 19	2	4

	Season Dates	Limits Bag	Limits Possession
Michigan (cont.)			
Special Season:			
Southern Michigan GMU	Jan. 3-Feb. 1	5	10
Central Michigan GMU	Jan. 3-Feb. 1	5	10
White-fronted and Brant	Sept. 20-Dec. 7	1	2
Light Geese	Sept. 20-Dec. 7	10	30
Minnesota			
Ducks:		6	12
Canvasbacks	Oct. 11-Nov. 9		
Pintails	Sept. 27-Oct. 26		
Other ducks	Sept. 27-Nov. 25		
Mergansers	Same as for Other ducks	5	10
Coots (8)	Same as for Other ducks	15	30
Geese:			
Canada (2):			
West Zone:			
West Central Zone	Oct. 11-Nov. 19	1	2
Rest of West Zone	Sept. 27-Nov. 5	1	2
(Special season)	Dec. 6- Dec. 15	5	10
Northwest Zone	Sept. 27-Nov. 5	1	2
(Special season)	Dec. 6-Dec. 15	5	10
Southeast Zone	Sept. 27-Dec. 5	2	4
(special season)	Dec. 12-Dec. 21	2	4
Rest of State	Sept. 27-Dec. 5	2	4
(special season)	Dec. 6-Dec. 15	5	10
White-fronted	Sept. 27-Dec. 21	2	4
Brant	Sept. 27-Dec. 21	1	2
Light Geese	Sept. 27-Dec. 21	20	40
Mississippi			
Ducks:		6	12
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 21-Nov. 23 & Nov. 28-Dec. 23 & Dec. 26-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 21-Jan. 25	3	6
White-fronted	Nov. 21-Jan. 25	2	4
Brant	Nov. 21-Jan. 25	2	4
Light Geese	Nov. 21-Jan. 25	20	--
Missouri			
Ducks and Mergansers:		6	12
North Zone:			
Canvasbacks	Oct. 25-Nov. 23		
Pintails	Oct. 25-Nov. 23		
Other ducks/mergansers	Oct. 25-Dec. 23		

	Season Dates	Limits Bag	Limits Possession
Missouri (cont.)			
Middle Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Pintails	Nov. 1-Nov. 30		
Other ducks/mergansers	Nov. 1-Dec. 30		
South Zone:			
Canvasbacks	Nov. 22-Dec. 21		
Pintails	Nov. 22-Dec. 21		
Other ducks/mergansers	Nov. 22-Jan. 20		
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Swan Lake Zone	Oct. 25-Nov. 30&	2	4
	Dec. 20-Jan. 18	2	4
Rest of North Zone	Sept. 27-Oct. 12 &	3	6
	Oct. 25-Nov. 23 &	2	4
	Dec. 20-Jan. 18	2	4
Middle Zone:			
Southeast Zone	Oct. 4-Oct. 12 &	2	4
	Nov. 22-Jan. 25	2	4
Rest of Middle Zone	Sept. 27-Oct. 12 &	3	6
	Nov. 1-Nov. 30 &	2	4
	Dec. 27-Jan. 25	2	4
South Zone	Oct. 4-Oct. 12 &	3	6
	Nov. 22-Jan. 25	2	4
White-fronted:			
North Zone:			
Swan Lake Zone	Oct. 25-Jan. 18	2	4
Rest of North Zone	Oct. 25-Jan. 18	2	4
Middle Zone:			
Southeast Zone	Nov. 1-Jan. 25	2	4
Rest of Middle Zone	Nov. 1-Jan. 25	2	4
South Zone	Nov. 1-Jan. 25	2	4
Brant	Same as for Canada geese	2	4
Light Geese:			
North Zone:			
Swan Lake Zone	Oct. 25-Jan. 18	20	--
Rest of North Zone	Oct. 25-Jan. 18	20	--
Middle Zone:			
Southeast Zone	Nov. 1-Jan. 25	20	--
Rest of Middle Zone	Nov. 1-Jan. 25	20	--
South Zone	Nov. 1-Jan. 25	20	--
Ohio			
Ducks (9):		6	12
North Zone:			
Canvasbacks	Oct. 31-Nov. 29		
Pintails	Oct. 18-Nov. 16		
Other ducks	Oct. 18-Nov. 29 &		
	Dec. 7-Dec. 23		

	Season Dates	Limits Bag	Limits Possession
Ohio (cont.)			
South Zone:			
Canvasbacks	Dec. 13-Jan. 11		
Pintails	Oct. 25-Nov. 1 &		
	Dec. 13-Jan. 3		
Other ducks	Oct. 25-Nov. 16 &		
	Dec. 13-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Oct. 18-Oct. 26 &	1	2
	Dec. 7-Jan. 1	1	2
Rest of North Zone	Oct. 18-Nov. 29 &	2	4
	Dec. 7-Jan. 2	2	4
(special season)	Jan. 17-Feb. 5	2	4
South Zone	Oct. 25-Nov. 16 &	2	4
	Dec. 13-Jan. 28	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30
Tennessee			
Ducks:		6	12
Reelfoot Zone:			
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
State Zone:			
Canvasbacks	Dec. 27-Jan. 25		
Pintails	Dec. 27-Jan. 25		
Other ducks	Nov. 27-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (10):			
Northwest Zone	Dec. 6-Feb. 15	2	4
Southwest Zone	Dec. 13-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Dec. 13-Jan. 31	2	4
Rest of State (10)	Oct. 4-Oct. 13 &	2	4
	Nov. 27-Jan. 25	2	4
White-fronted	Nov. 22-Feb. 15	2	4
Brant	Nov. 27-Jan. 31	2	4
Light Geese	Nov. 15-Feb. 29	20	--
Wisconsin			
Ducks:		6	12
North Zone:			
Canvasbacks	Sept. 27-Oct. 26		
Pintails	Sept. 27-Oct. 26		
Other ducks	Sept. 27-Nov. 25		

	Season Dates	Limits	
		Bag	Possession
Wisconsin (cont.)			
South Zone:			
Canvasbacks	Oct. 18-Nov. 16		
Pintails	Oct. 4-Oct. 12 &		
	Oct. 18-Nov. 7		
Other ducks	Oct. 4-Oct. 12 &		
	Oct. 18-Dec. 7		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	10	20
Geese:			
Canada (2):			
Horicon Zone	Sept. 16-Dec. 17	Tag System--See State Regulations	
Collins Zone	Sept. 16-Nov. 21	Tag System--See State Regulations	
Exterior Zone (2):			
Rock Prairie Subzone	Sept. 20-Dec. 21	1	2
Mississippi River Subzone	Oct. 4-Oct. 12 &	1	2
	Oct. 18-Dec. 17	1	2
Brown County Subzone	Sept. 20-Dec. 21	1	2
Rest of Exterior Zone:			
North Duck Zone	Sept. 20-Dec. 21	1	2
South Duck Zone	Sept. 20-Dec. 21	1	2
White-fronted and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	30

(1) In Arkansas and in Illinois, the daily bag limit may include no more than one hen mallard.
(2) Harvests of Canada geese will be limited by quotas established in the September 2003, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective Zone (and associated area, if applicable) will be closed either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(3) In Illinois, shooting hours for geese in the Southern Illinois quota Zone through January 28 shall close at 3 p.m.
(4) In Illinois, white-fronted goose, light goose, and brant seasons will close with Canada goose seasons if the season closes early due the quota being reached.
(5) In Kentucky, in Fulton County, if the Canada goose season closes after January 31 and before February 15, the season for light geese will close with the Canada goose season.
(6) In Louisiana, during the Canada goose season, a special permit is required by the State.
(7) In Michigan, the daily bag limit includes no more than 1 hen mallard.
(8) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.
(9) In Ohio, the daily bag limit may include no more than 3 mallards, only 1 of which may be a hen.
(10) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

		Limits	
	Season Dates	Bag	Possession
Colorado			
Ducks:		6	12
Canvasbacks	Oct. 4-Oct. 26 & Nov. 1-Nov. 16		
Pintails	Oct. 4-Oct. 26 & Nov. 1-Nov. 16		
Other ducks	Oct. 4-Oct. 26 & Nov. 1-Nov. 30 & Dec. 7-Jan. 18		
Coots	Same as for Other ducks	15	30
Mergansers	Same as for Other ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 4-Oct. 12 &	3	6
	Nov. 22-Feb. 15	3	6
South Park/San Luis Valley Unit	Oct. 4-Oct. 12 &	3	6
	Nov. 22-Feb. 15	3	6
North Park Unit	Oct. 4-Oct. 12 &	3	6
	Nov. 22-Feb. 15	3	6
Arkansas Valley Unit (1)	Nov. 22-Feb. 15	3	6
Pueblo County	Dec. 6-Feb. 15	2	4
Rest of State in Central Flyway	Nov. 22-Feb. 15	3	6
Light Geese:			
Northern Front Range Unit	Nov. 22-Feb. 15	20	--
South Park/San Luis Valley Unit	Nov. 22-Feb. 15	3	6
North Park Unit	Nov. 22-Feb. 15	3	6
Arkansas Valley Unit (1)	Nov. 15-Feb. 22	20	--
Pueblo County	Nov. 15-Feb. 22	20	--
Rest of State in Central Flyway	Nov. 8-Feb. 22	20	--
Kansas			
Ducks (2):		6	12
High Plains:			
Canvasbacks	Oct. 11-Nov. 18		
Pintails	Oct. 11-Nov. 18		
Other ducks	Oct. 11-Jan 6 & Jan. 17-Jan. 25		

	Season Dates	Limits Bag	Limits Possession
Kansas (cont.)			
Low Plains:			
Early Zone:			
Canvasbacks	Oct. 11-Nov. 18		
Pintails	Oct. 11-Nov. 18		
Other ducks	Oct. 11-Dec. 14 & Dec. 26-Jan. 3		
Late Zone:			
Canvasbacks	Oct. 25-Nov. 2 & Nov. 8-Dec. 7		
Pintails	Oct. 25-Nov. 2 & Nov. 8-Dec. 7		
Other ducks	Oct. 25-Nov. 2 & Nov. 8-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese (3):			
Canada	Oct. 18-Oct. 19 &	3	6
	Nov. 1-Feb. 1	3	6
White-fronted	Oct. 18-Oct. 19 &	2	4
	Nov. 1-Jan. 23	2	4
Light Geese	Oct. 18-Feb. 1	20	--
Montana			
Ducks:		6	12
Zone 1:			
Canvasbacks	Oct. 4-Nov. 11		
Pintails	Oct. 4-Nov. 11		
Other ducks	Oct. 4-Jan. 8		
Zone 2:			
Canvasbacks	Oct. 4-Nov. 11		
Pintails	Oct. 4-Nov. 11		
Other ducks	Oct. 4-Jan. 8		
Mergansers	Oct. 4-Jan. 8	5	10
Coots	Oct. 4-Jan. 8	15	30
Dark Geese	Oct. 4-Jan. 16	4	8
Light Geese	Oct. 4-Jan. 16	5	10
Nebraska			
Ducks:		6	12
High Plains:			
Canvasbacks	Oct. 4-Nov. 11		
Pintails	Oct. 4-Nov. 11		
Other ducks	Oct. 4-Dec. 14 & Dec. 20-Jan. 12		
Low Plains:			
Zones 1 and 2:			
Canvasbacks	Oct. 18-Oct. 19 & Oct. 25-Nov. 30		
Pintails	Oct. 18-Oct. 19 & Oct. 25-Nov. 30		

	Season Dates	Limits Bag	Limits Possession
Nebraska (cont.)			
Other ducks	Oct. 18-Oct. 19 & Oct. 25-Jan. 4		
Zones 3 and 4:			
Canvasbacks	Oct. 4-Nov. 11		
Pintails	Oct. 4-Nov. 11		
Other ducks	Oct. 4-Dec. 14 & Dec. 20-Dec. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Nov. 1-Feb. 3	3	6
East Unit	Oct. 4-Oct. 12 &	3	6
	Oct. 25-Jan. 18	3	6
North Central Unit	Oct. 4-Jan. 6	3	6
Platte River Unit	Nov. 1-Feb. 3	3	6
White-fronted	Oct. 4-Dec. 28	2	4
Light Geese:			
Rainwater Basin Area - East	Oct. 4-Jan. 16	20	--
Rainwater Basin Area - West	Oct. 4-Jan. 16	20	--
Rest of State	Oct. 4-Jan. 16	20	–
New Mexico			
Ducks and Mergansers (4):		6	12
North Zone:			
Canvasbacks	Oct. 8-Nov. 15		
Pintails	Oct. 8-Nov. 15		
Other ducks/mergansers	Oct. 8-Jan. 11		
South Zone:			
Canvasbacks	Dec. 18-Jan. 25		
Pintails	Dec. 18-Jan. 25		
Other ducks/mergansers	Oct. 22-Jan. 25		
Coots	Same as for Other ducks	15	30
Dark Geese (5):			
Middle Rio Grande Valley Unit (5)	Jan. 17-Jan. 25	2	2
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	80
North Dakota			
Ducks:		6	12
High Plains:			
Canvasbacks	Sept. 27-Nov. 4		
Pintails	Sept. 27-Nov. 4		
Other ducks	Sept. 27-Dec. 7 & Dec. 13-Jan. 4		
Remainder of State:			
Canvasbacks	Sept. 27-Nov. 4		
Pintails	Sept. 27-Nov. 4		
Other ducks	Sept. 27-Dec. 7		
Mergansers	Same as for Other ducks	5	10

	Season Dates	Limits Bag	Limits Possession
North Dakota (cont.)			
Coots	Same as for Other ducks	15	30
Geese:			
Canada Geese (6):			
High Plains Unit	Sept. 27-Dec. 25	3	6
Rest of State	Sept. 27-Dec. 25	3	6
White-fronted (6)	Sept. 27-Dec. 21	2	4
Light Geese (6)	Sept. 27-Dec. 25	20	--
Oklahoma			
Ducks:		6	12
High Plains:			
Canvasbacks	Oct. 11-Nov. 18		
Pintails	Oct. 11-Nov. 18		
Other ducks	Oct. 11-Dec. 7 & Dec. 13-Jan. 12		
Low Plains:			
Zone 1:			
Canvasbacks	Oct. 25-Dec. 2		
Pintails	Oct. 25-Dec. 2		
Other ducks	Oct. 25-Dec. 7 & Dec. 13-Jan. 11		
Zone 2:			
Canvasbacks	Dec. 18-Jan. 25		
Pintails	Dec. 18-Jan. 25		
Other ducks	Nov. 8-Dec. 7 & Dec. 13-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 8-Dec. 7 &	3	6
	Dec. 13-Feb. 15	3	6
White-fronted	Nov. 8-Dec. 7 &	2	4
	Dec. 13-Feb. 6	2	4
Light Geese	Nov. 8-Dec. 7 &	20	--
	Dec. 13-Feb. 15	20	--
South Dakota			
Ducks:		6	12
High Plains:			
Canvasbacks	Sept. 27-Nov. 4		
Pintails	Sept. 27-Nov. 4		
Other ducks	Sept. 27-Dec. 9 & Dec. 13-Jan. 4		
Low Plains:			
North Zone:			
Canvasbacks	Sept. 27-Nov. 4		
Pintails	Sept. 27-Nov. 4		
Other ducks	Sept. 27-Dec. 9		

	Season Dates	Limits Bag	Limits Possession
South Dakota (cont.)			
Middle Zone:			
Canvasbacks	Sept. 27-Nov. 4		
Pintails	Sept. 27-Nov. 4		
Other ducks	Sept. 27-Dec. 9		
South Zone:			
Canvasbacks	Oct. 11-Nov. 18		
Pintails	Oct. 11-Nov. 18		
Other ducks	Oct. 11-Dec. 23		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
White-fronted	Sept. 27-Dec. 21	2	4
Canada:			
Unit 1	Sept. 27-Dec. 25	3	6
Unit 2	Oct. 25-Jan. 27	3	6
Unit 3:			
Power Plant Area	Sept. 27-Nov. 30 &	3	6
	Dec. 1-Dec. 14	2	4
Rest of Unit	Sept. 27-Dec. 14	3	6
Unit 4	Oct. 25-Dec. 1 &	3	6
	Jan. 10-Jan. 18	3	6
Light Geese	Sept. 27-Dec. 21	20	--
Texas			
Ducks:		6	12
High Plains:			
Canvasbacks	Dec. 18-Jan. 25		
Pintails	Dec. 18-Jan. 25		
Other ducks	Oct. 25-Oct. 27 &		
	Nov. 1-Jan. 25		
Low Plains:			
North Zone:			
Canvasbacks	Dec. 18-Jan. 25		
Pintails	Dec. 18-Jan. 25		
Other ducks	Nov. 8-Nov. 9 &		
	Nov. 15-Jan. 25		
South Zone:			
Canvasbacks	Dec. 11-Jan. 18		
Pintails	Dec. 11-Jan. 18		
Other ducks	Oct. 25-Oct. 26 &		
	Nov. 8-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
East Tier:			
South Zone:			
Canada geese and Brant	Oct. 25-Jan. 18	3	6
White-fronted	Oct. 25-Jan. 18	2	4
Light Geese	Oct. 25-Jan. 18	20	–

	Season Dates	Limits Bag	Limits Possession
Texas (cont.)			
North Zone:			
Canada geese and Brant	Nov. 1-Jan. 25	3	6
White-fronted	Nov. 1-Jan. 25	2	4
Light Geese	Oct. 25-Jan. 25	20	–
West Tier:			
Dark Geese:			
Canada geese and Brant	Nov. 1-Feb. 3	3	6
White-fronted	Nov. 1-Feb. 3	1	2
Light Geese	Oct. 25-Feb. 3	20	--
Wyoming			
Ducks:		6	12
Zone 1:			
Canvasbacks	Oct. 4-Oct. 19 & Oct. 25-Nov. 16		
Pintails	Oct. 4-Oct. 19 & Oct. 25-Nov. 16		
Other ducks	Oct. 4-Oct. 19 & Oct. 25-Jan. 13		
Zone 2:			
Canvasbacks	Sept. 27-Oct. 19 & Oct. 25-Nov. 9		
Pintails	Sept. 27-Oct. 19 & Oct. 25-Nov. 9		
Other ducks	Sept. 27-Oct. 19 & Oct. 25-Dec. 14 Dec. 20-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese:			
Zone 1	Oct. 4-Oct. 19 &	5	10
	Nov. 1-Dec. 14 &	5	10
	Dec. 20-Feb. 3	5	10
Zone 2	Sept. 27-Oct. 12 &	5	10
	Nov. 1-Dec. 14 &	5	10
	Dec. 20-Feb. 3	5	10
Zone 3 (7):	Oct. 4-Oct. 19 &	1	2
	Nov. 15-Feb. 12	5	10
Light Geese	Oct. 4-Dec. 31 &	10	40
	Jan. 27-Feb. 12	10	40

(1) In Colorado, in the Arkansas Valley Unit, shooting hours are one-half hour before sunrise to noon November 15 through November 21.

(2) In Kansas, the daily bag limit may include no more than 2 scaup and 1 hen mallard.

(3) See State regulations for additional restrictions.

(4) In New Mexico, the daily bag limit consists of no more than 5 mallards (of which only 2 may be female mallards), 2 redheads, 2 scaup, 2 wood ducks, 1 hooded merganser, and 1 northern pintail (see dates by zone).

(5) In New Mexico, the season for dark geese is closed in Bernalillo and Sandoval Counties. In the Middle Rio Grande Valley Unit, a state permit is required.

(6) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 25 and until 2 p.m. the remainder of the season, except that during September 27 through December 25, shooting hours are one-half hour before sunrise to sunset on Saturdays and Wednesdays for Canada and white-fronted geese.

(7) In Wyoming, the shooting hours for dark geese in Goshen County are one-half hour before sunrise to 1 p.m., except during the period October 4 through October 19 and on all Saturdays and Wednesdays after November 15 until the close of the dark goose season, when shooting hours are until sunset. In Platte County, shooting hours for dark geese in the area east of Interstate Highway 25 and north of Wyoming Highway 160 and Platte County Road 271 are 1/2 hour before sunrise to sunset. In the remainder of Platte County, shooting hours for dark geese are 1/2 hour before sunrise to 1 p.m. except during the period October 4 through October 19 and on all Saturdays and Wednesdays from November 15 until the close of the dark goose season, and on all Sundays from January 1 until the close of the dark goose season, when shooting hours are until sunset.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 1 pintail, 1 canvasback, 2 redheads, and 4 scaup. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

		Limits	
	Season Dates	Bag	Possession
Arizona			
Ducks (1):		7	14
North Zone			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Nov. 27-Jan. 25		
Other ducks	Oct. 17-Jan. 25		
South Zone:			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Nov. 27-Jan. 25		
Other ducks	Oct. 17-Jan. 25		
Coots and moorhens	Oct. 17-Jan. 25	25	25
Geese:			
Dark (2):			
GMU 22 & 23	Nov. 15-Jan. 25	3	3
GMU 1 & 27	Dec. 1-Jan. 25	3	3
Rest of State	Oct. 17-Jan. 25	3	3
Light (2):			
GMU 22 & 23	Nov. 15-Jan. 25	3	3
Rest of State	Oct. 17-Jan. 25	3	3
California			
Ducks:		7	14
Northeastern Zone:			
Canvasbacks	Oct. 11-Dec. 9		

	Season Dates	Limits	
		Bag	Possession
California (cont.)			
Pintails	Oct. 11-Nov. 30 & Jan. 17-Jan. 25		
Other ducks	Oct. 11-Dec. 9 & Dec. 12-Jan. 25		
Colorado River Zone:			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Nov. 27-Jan. 25		
Other ducks	Oct. 17-Jan. 25		
Southern Zone:			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Nov. 27-Jan. 25		
Other ducks	Oct. 18-Jan. 25		
Southern San Joaquin Valley Zone:			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Oct. 18-Oct. 26 & Dec. 6-Jan. 25		
Other ducks	Oct. 18-Nov. 19 & Nov. 21-Jan. 25		
Balance-of-State Zone:			
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Oct. 18-Oct. 26 & Dec. 6-Jan. 25		
Other ducks	Oct. 18-Nov. 19 & Nov. 21-Jan. 25		
Coots and moorhens:			
Northeastern Zone	Same as for Other ducks	25	25
Colorado River Zone	Same as for Other ducks	25	25
Southern Zone	Same as for Other ducks	25	25
Southern San Joaquin Valley Zone	Same as for Other ducks	25	25
Balance-of-State Zone	Same as for Other ducks	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 11-Jan. 18	2	4
Small Canada Geese (3)	Oct. 11-Jan. 18	1	2
White-fronted Geese	Oct. 11-Jan. 18	2	4
Light Geese	Oct. 11-Jan. 18	3	6
Colorado River Zone:		6	12
Canada Geese	Oct. 17-Jan. 25	3	6
White-fronted Geese	Oct. 17-Jan. 25	3	6
Light Geese	Oct. 17-Jan. 25	3	6
Southern Zone:		5	10
Dark Geese:		3	6
Canada geese	Oct. 18-Jan. 25	3	6
Small Canada Geese (3)	Oct. 18-Jan. 25	1	2
White-fronted Geese	Oct. 18-Jan. 25	3	6
Light Geese	Oct. 18-Jan. 25	3	6

	Season Dates	Limits Bag	Limits Possession
California (cont.)			
Balance-of-State Zone:		3	6
Dark Geese :	Nov. 1-Jan. 25	2	4
Canada:			
Del Norte & Humboldt	Nov. 8-Nov. 23	--	--
Sacramento Valley Area	Closed	--	--
Rest of Zone:	Nov. 1-Jan. 25	2	4
Small Canada geese (3)	Nov. 1-Jan. 25	1	2
White-fronted:			
Sacramento Valley Closure	Nov. 1-Dec. 14	2	4
Rest of Zone	Nov. 1-Jan. 25	2	4
Light Geese	Nov. 1-Jan. 25	3	6
Brant	Nov. 10-Dec. 9	2	4
Colorado			
Ducks:		7	14
Canvasbacks	Oct. 4-Oct. 19 & Oct. 29-Dec. 11		
Pintails	Oct. 4-Oct. 19 & Oct. 29-Dec. 11		
Other ducks	Oct. 4-Oct. 19 & Oct. 29-Jan. 25		
Coots	Same as for Other ducks	25	25
Geese:	Oct. 4-Oct. 10 &	3	6
	Oct. 29-Jan. 25	3	6
Idaho			
Ducks:		7	14
Zone 1:			
Canvasbacks	Oct. 4-Dec. 2		
Pintails	Oct. 4-Dec. 2		
Other ducks	Oct. 4-Jan. 16		
Zone 2:			
Canvasbacks	Oct. 4-Dec. 2		
Pintails	Oct. 4-Dec. 2		
Other ducks	Oct. 4-Jan. 16		
Zone 3:			
Canvasbacks	Oct. 11-Dec. 9		
Pintails	Oct. 11-Dec. 9		
Other ducks	Oct. 11-Jan. 23		
Coots	Same as for Other ducks	25	25
Geese:			
Zone 1:		4	8
Dark	Oct. 4-Jan. 16	4	8
Light	Oct. 4-Jan. 16	4	8
Zone 2:		4	8
Dark	Oct. 11-Jan. 23	4	8
Light	Oct. 11-Jan. 23	4	8
Zone 3:		3	6
Dark	Oct. 11-Jan. 23	3	6
Light	Oct. 11-Jan. 23	3	6

	Season Dates	Limits Bag	Limits Possession
Idaho (cont.)			
Zone 4 (4):		4	8
Dark	Oct. 4-Jan. 16	4	8
Light	Oct. 4-Jan. 16	4	8
Zone 5:		4	8
Dark	Oct. 4-Jan. 16	4	8
Light	Oct. 4-Jan. 16	4	8
Montana			
Ducks:		7	14
Canvasbacks	Oct. 4-Dec. 2		
Pintails	Oct. 4-Dec. 2		
Other ducks	Oct. 4-Jan. 16		
Coots	Oct. 4-Jan. 16	25	25
Geese (5):			
Dark	Oct. 4-Jan. 16	4	8
Light	Oct. 4-Jan. 16	3	6
Nevada			
Ducks:		7	14
Lincoln & Clark Counties:			
Canvasbacks	Oct. 11-Oct. 15 & Nov. 1-Dec. 25		
Pintails	Oct. 11-Oct. 15 & Nov. 1-Dec. 25		
Other ducks	Oct. 11-Oct. 15 & Oct. 17-Jan. 25		
Rest of State:			
Canvasbacks	Oct. 11-Oct. 15 & Oct. 17-Dec. 10		
Pintails	Oct. 11-Oct. 15 & Dec. 2-Jan. 25		
Other ducks	Oct. 11-Oct. 15 & Oct. 17-Jan. 25		
Coots and moorhens	Oct. 11-Oct. 15 &	8	16
	Oct. 17-Jan. 25	8	16
Dark Geese:			
Lincoln & Clark Counties	Oct. 18-Jan. 25	2	4
Scripps/Washoe Lake Zone	Oct. 18-Jan. 4	3	6
Rest of State	Oct. 18-Jan. 25	3	6
Light Geese:			
Lincoln & Clark Counties	Oct. 18-Jan. 25	3	6
Scripps/Washoe Lake Zone	Oct. 18-Jan. 4	3	6
Rest of State (6)	Oct. 18-Jan. 25	3	6
New Mexico			
Ducks (7):		7	14
Canvasbacks	Nov. 27-Jan. 25		
Pintails	Nov. 27-Jan. 25		
Other ducks	Oct. 13-Jan. 25		
Coots and Moorhens	Same as for Other ducks	12	24

	Season Dates	Limits Bag	Limits Possession
New Mexico (cont.)			
Dark Geese (8):			
North Zone	Sept. 27-Oct. 12&	3	6
	Nov. 3-Jan. 25	3	6
South Zone	Oct. 18-Jan. 25	2	4
Light Geese:			
North Zone	Sept. 27-Oct. 12 &	1	2
	Nov. 3-Jan. 25	1	2
South Zone	Oct. 18-Jan. 25	1	2
Oregon			
Ducks:		7	14
Zone 1:			
Columbia Basin Unit:			
Canvasbacks	Oct. 11-Oct. 19 &		
	Dec. 6-Jan. 25		
Pintails	Oct. 11-Oct. 19 &		
	Dec. 6-Jan. 25		
Other ducks	Oct. 11-Nov. 2 &		
	Nov. 5- Jan. 25		
Rest of Zone 1:			
Canvasbacks	Oct. 11-Oct. 19 &		
	Dec. 6-Jan. 25		
Pintails	Oct. 11-Oct. 19 &		
	Dec. 6-Jan. 25		
Other ducks	Oct. 11-Nov. 2 &		
	Nov. 5- Jan. 25		
Zone 2:			
Canvasbacks	Oct. 11-Dec. 9		
Pintails	Oct. 11-Dec. 9		
Other ducks	Oct. 11-Dec. 9 &		
	Dec. 12- Jan. 25		
Coots	Same as for Other ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 11-Oct. 31 &	4	8
	Nov. 15-Jan. 25	4	8
Light Geese	Oct. 11-Oct. 31 &	3	6
	Nov. 15-Jan. 25	3	6
Northwest Special Permit Zone (9):			
Dark Geese	Oct. 25-Nov. 9 &	4	8
	Nov. 22-Jan. 18 &	4	8
	Feb. 11-Feb. 29	4	8
Dusky Canada geese		1 per season	
Cackling Canada geese		4	8
Light Geese	Oct. 25-Nov. 9 &	3	6
	Nov. 22-Jan. 18	3	6
Southwest General Zone (10):			
Dark Geese	Oct. 11-Nov. 30 &	4	8
	Dec. 10-Jan. 25	4	8

	Season Dates	Limits Bag	Limits Possession
Oregon (cont.)			
Light Geese	Oct. 11-Nov. 30 &	3	6
	Dec. 10-Jan. 25	3	6
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 11-Nov. 30 &	4	8
	Dec. 10-Jan. 25	4	8
Cackling Canada geese		1	2
White-fronted geese:			
Lake County		2	4
Rest of Zone		4	8
Light Geese	Oct. 11-Nov. 30 &	3	6
	Dec. 10-Jan. 25	3	6
Remainder of Eastern Zone:			
Dark Geese	Oct. 11-Nov. 2 &	4	8
	Nov. 12-Jan. 25	4	8
Cackling Canada geese		1	2
White-fronted geese		4	8
Light Geese	Oct. 11-Nov. 2 &	3	6
	Nov. 12-Jan. 25	3	6
Brant	Nov. 10-Nov. 23	2	4
Utah (11)			
Ducks:		7	14
Zone 1:			
Canvasbacks	Oct. 4-Dec. 2		
Pintails	Oct. 4-Dec. 2		
Other ducks	Oct. 4-Jan. 17		
Zone 2:			
Canvasbacks	Oct. 4-Dec. 2		
Pintails	Oct. 4-Dec. 2		
Other ducks	Oct. 4-Jan. 17		
Coots	Same as for Other ducks	25	25
Geese:			
Light	Oct. 4-Jan. 17	3	6
Dark:			
Washington County (12)	Oct. 11-Jan. 24	3	6
Rest of State	Oct. 4-Jan. 17	3	6
Washington			
Ducks:		7	14
East Zone:			
Canvasbacks	Oct. 11-Oct. 15 &		
	Dec. 2-Jan. 25		
Pintails	Oct. 11-Oct. 15 &		
	Dec. 2-Jan. 25		
Other ducks	Oct. 11-Oct 15 &		
	Oct. 18-Jan. 25		

	Season Dates	Limits Bag	Limits Possession
Washington (cont.)			
West Zone (13):			
Canvasbacks	Oct. 11-Oct. 15 & Dec. 2-Jan. 25		
Pintails	Oct. 11-Oct. 15 & Dec. 2-Jan. 25		
Other ducks	Oct. 11-Oct 15 & Oct. 18-Jan. 25		
Coots	Same as for Other ducks	25	25
Geese (14):		4	8
Management Area 1 (16):			
Light Geese	Oct 11-Jan. 4		
Dark Geese	Oct 11-Oct. 23 & Nov. 1-Jan. 25		
Management Area 2A (15)	Dec. 9-Jan. 24		
Dusky Canada geese		1 per season	
Late-Season Canada Geese	Jan. 31-Mar. 10	4	8
Dusky Canada geese		1 per season	
Management Area 2B (15)	Nov. 15-Jan. 4 & Jan. 31-Mar. 10	4	8
Dusky Canada geese		1 per season	
Management Areas 3 (16)	Oct. 11-Oct. 23 &	4	8
	Nov. 1-Jan. 25	4	8
Management Areas 4 & 5 (16)	Oct. 11-Oct. 13 &	4	8
	Oct. 18-Jan. 25	4	8
Brant (17)	Nov. 22-Nov. 28 &	2	4
	Jan. 17-Jan. 25	2	4
Wyoming			
Ducks:		7	14
Canvasbacks	Sept. 27-Nov. 25		
Pintails	Sept. 27-Nov. 25		
Other ducks	Sept. 27-Jan. 10		
Coots	Same as for Other ducks	25	25
Dark Geese	Sept. 27-Jan. 2	4	8

(1) In Arizona, the daily limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 female mallards and Mexican-like ducks, in the aggregate, may be in possession.

(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese and 3 and 6 for light geese, respectively.

(3) In California, small Canada geese are cackling and Aleutian Canada geese.

(4) In Idaho, the season on light geese is closed in Fremont and Teton Counties.

(5) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.

(6) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.

(7) In New Mexico, the daily bag limit for ducks and mergansers may include no more than 5 mergansers (only 1 of which may be a hooded merganser).
(8) In New Mexico, the season for dark geese is closed in Bernalillo and Sandual Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(9) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(10) In Oregon, those portions of Coos and Curry Counties south of Bandon and west of US 101 are closed to all Canada goose hunting.
(11) In Utah, the shooting hours are 8:00 a.m. to sunset on October 6 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties, and November 3 statewide.
(12) In Utah, the season in Washington County is for Canada geese only.
(13) In Washington, the daily bag limit in the West Zone may include no more than 4 scoters and 4 oldsquaws, with the possession limit twice the daily bag limit. The daily bag and possession limit for harlequins is 1.
(14) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(15) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas1, 3, and 5, hunting is everyday. See State regulations for details, including shooting hours.
(17) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition
Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks (except Pintails), mergansers, coots, and geese	Nov. 8
* * * * *	
Florida	
Ducks, mergansers, coots, moorhens, and geese (9)	Jan. 31 & Feb. 1
* * * * *	
Maryland	
Ducks, coots, mergansers, Canada geese, and brant	Oct. 11
Massachusetts	
Ducks, mergansers, coots, and geese	Oct. 11 & 13
* * * * *	

	Season Dates
New York	
Ducks, coots, mergansers, and Canada geese:	
Long Island Zone	Nov. 8 & 9
Lake Champlain Zone	Sept. 27 & 28
Northeastern Zone	Sept. 20 & 21
Southeastern Zone	Sept. 27 & 28
Western Zone	Oct. 4 & 5
* * * * *	
North Carolina	
Ducks, mergansers, Canada geese (10), and coots	Jan. 31
* * * * *	
South Carolina	
Ducks and geese	Jan. 31 & Feb. 1
* * * * *	
Virginia	
Ducks, mergansers, coots, moorhens, gallinules, and Canada geese (11)	Oct. 18
* * * * *	
MISSISSIPPI FLYWAY	
* * * * *	
Arkansas	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Jan. 31 & Feb. 1
Illinois	
Ducks, mergansers, coots, and geese:	
North Zone	Oct. 11 & 12
Central Zone	Oct. 18 &19
South Zone	Nov. 8 & 9
Indiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
North Zone	Oct. 4 & 5
South Zone	Nov. 1 & 2
Ohio River Zone	Nov. 8 & 9
* * * * *	
Louisiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
West Zone	Nov. 1 & 2
East Zone	Nov. 8 & 9
* * * * *	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Jan. 31 & Feb. 1
Missouri	
Ducks, coots, and geese:	
North Zone	Oct. 18 & 19
Middle Zone	Oct. 25 & 26
South Zone	Nov. 15 & 16

	Season Dates
Ohio	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Oct. 11 & 12
Tennessee	
Ducks, mergansers, and coots	Jan. 31 & Feb. 1
* * * * *	
CENTRAL FLYWAY	
* * * * *	
Kansas (5)	
Ducks, dark geese, mergansers and coots:	
High Plains	Oct. 4 & 5
Low Plains	
Early Zone	Oct. 4 & 5
Late Zone	Oct. 11 & 12
* * * * *	
Oklahoma	
Ducks, mergansers, coots, and geese:	
High Plains	Oct. 4 & 5
Low Plains:	
Zone 1	Oct. 18 & 19
Zone 2	Nov. 1 & 2
* * * * *	
Texas	
Ducks, mergansers, and coots:	
High Plains	Oct. 18 & 19
Low Plains:	
North Zone	Oct. 25 & 26
South Zone	Oct. 18 & 19
* * * * *	
PACIFIC FLYWAY	
Arizona	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone	Oct. 11
South Zone	Jan. 31
California	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 27 &28
Colorado River Zone	Jan. 31
Southern Zone	Jan. 31 & Feb. 1
Southern San Joaquin Valley	Jan. 31 & Feb. 1
Balance-of-State Zone	Jan. 31 & Feb. 1
Colorado	
Ducks, dark and light geese, mergansers, and coots	Sept. 27 & 28

* * * * *

	Season Dates
Nevada	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Lincoln and Clark Counties	Jan. 31
Rest of State	Sept. 27

* * * * *

(5) In Kansas, the adult accompanying the youth and nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

* * * * *

(9) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR 2, north of Jim Woodruff Dam, and east of SR271. The light goose season is only open north and west of the Suwannee River.

(10) In North Carolina, the daily bag limit in the Northeast Hunt Zone may not include Canada geese.

(11) In Virginia, the daily bag limit for Canada geese is 1.

5. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 27, 2003, Federal Register (68 FR 51658).

Note: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832).

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
* * * * *			
Oklahoma (1)	Oct. 25-Jan. 25	3	6
* * * * *			
Texas (1):			
Zone A	Nov. 1-Feb. 1	3	6
Zone B	Nov. 22-Feb. 1	3	6
Zone C	Dec. 20-Jan. 18	2	4

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

6. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 1-Jan. 31	1 tundra swan per season	
Virginia	Dec. 1-Jan 31	1 tundra swan per season	
CENTRAL FLYWAY (1)			
Montana	Oct. 4-Jan. 8	1 tundra swan per season	
North Dakota	Oct. 4-Dec. 14	1 tundra swan per season	
South Dakota	Oct. 4-Dec. 21	1 tundra swan per permit	
PACIFIC FLYWAY (1)(2)			
Montana (3)	Oct. 18-Dec. 1	1 swan per season	
Nevada (4)(5)	Oct. 18-Jan. 4	1 swan per season	
Utah (3)(5)	Oct. 4-Dec. 14	1 swan per season	

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) All harvested swans and tags must be checked or registered within 3 days of harvest.
(4) All harvested swans and tags must be checked or registered within 5 days of harvest.
(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

7. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 27 (68 FR 51658) and the September Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 2003, Federal Register (68 FR 51832).

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
* * * * *	
Ducks, mergansers, coots, and brant	Jan. 27-Mar. 10
Florida	
* * * * *	
Ducks, mergansers, light geese, and coots (6)	Oct. 30-Nov. 12 & Feb. 2-Feb. 27
Georgia	
Ducks, mergansers, gallinules, coots, and sea ducks	Nov. 15-Nov. 21 & Dec. 1-Dec. 5 & Jan. 26-Feb. 15
Maine	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 10-Jan. 31
South Zone	Jan. 7-Feb. 28
Maryland	
* * * * *	
Ducks	Oct. 1-Oct. 4 & Jan. 31-Mar. 10
Brant	Jan. 28-Mar. 10
Massachusetts	
Ducks, mergansers, and coots:	
Western Zone	Oct. 6-Oct. 13 & Dec. 23-Jan. 20
Central Zone	Oct. 6-Oct. 14 & Dec. 1-Dec. 18 & Jan. 11-Jan. 20
Coastal Zone	Oct. 6-Oct. 14 & Oct. 27-Nov. 20 & Jan. 19-Jan. 20
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 10-Nov. 25 & Dec. 22-Jan. 21
Coastal Zone	Jan. 24-Mar. 10

	Extended Falconry Dates
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 15 & Nov. 9-Jan. 15
South Zone	Oct. 1-Nov. 7 & Nov. 30-Dec. 25 & Dec. 28-Jan. 15
Ducks:	
North Zone	Nov. 8-Nov. 14 & Jan. 2-Jan. 31
South Zone	Dec. 11-Dec. 13 & Jan. 11-Feb. 14
Coastal Zone	Nov. 21-Nov. 22 & Jan. 25-Feb. 28
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1-Nov. 20 & Dec. 1-Dec. 6 & Jan. 26-Jan. 31
Northeastern Zone	Oct. 1-Oct. 3 & Nov. 16-Nov. 26 & Dec. 14-Dec. 31
Southeastern Zone	Oct. 1-Oct. 10 & Oct. 20-Nov. 7 & Dec. 29-Dec. 31
Western Zone	Oct. 1-Oct. 17 & Dec. 3-Dec. 26
Pennsylvania	
Mourning doves	Oct. 6-Oct. 31 & Dec. 1-Dec.16
Ducks:	
North Zone	Oct. 27-Nov. 14 & Jan. 9-Jan. 19 & Feb. 16-Mar. 10
South Zone	Oct. 20-Nov. 14 & Feb. 12-Mar. 10
Northwest Zone	Oct. 27-Oct. 31 & Dec. 26-Jan. 19 & Feb. 16-Mar. 10
Lake Erie Zone	Jan. 16-Mar. 10
Canada Geese:	
SJBP Zone	Feb. 26-Mar. 10
Pymatuning Zone	Dec. 26-Mar. 10
AP Zone	Mar. 3-Mar. 10
RP Zone	Feb. 26-Mar. 10
South Carolina	
Ducks, mergansers, and coots	Oct. 22-Nov. 25 & Dec. 1-Dec. 11

	Extended Falconry Dates
Virginia	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 8-Dec. 12 & Jan. 26-Feb. 28
Canada Geese	Dec. 2-Dec. 12 & Jan. 26-Feb. 21
Brant	Nov. 7-Nov. 14 & Dec. 8-Dec. 12 & Jan. 26-Mar. 10
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Dec. 8-Dec. 11 & Dec. 25 & Jan. 26-Feb. 18
* * * * *	
Illinois	
* * * * *	
Ducks, mergansers, and coots	Feb. 11-Mar. 10
Indiana	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 27-Oct. 3 & Feb. 17-Mar. 9
South Zone	Oct. 5-Oct. 12 & Feb. 18-Mar. 9
Ohio River Zone	Oct. 5-Oct. 12 & Feb. 18-Mar. 9
Iowa	
Ducks, mergansers, and coots	Dec. 15-Jan. 28
Canada Geese and Brant:	
North Zone	Dec. 6-Dec. 27
South Zone	Oct. 20-Nov. 7 & Dec. 25-Dec. 27
White-fronted Geese	
North Zone	Dec. 22-Dec. 27
South Zone	Dec. 25-Dec. 27
Kentucky	
Ducks, mergansers, and coots	Nov. 5-Nov. 26 & Jan. 26-Feb. 1
Canada Geese:	
Western Goose Zone	
Fulton County	Nov. 8-Dec. 5
Rest of Zone	Nov. 5-Dec. 5
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 12
Rest of State	Nov. 5-Dec. 12
White-fronted geese, brant, and light geese	Nov. 5-Nov. 26

	Extended Falconry Dates
Michigan	
* * * * *	
Ducks, mergansers, coots, and moorhens:	
North Zone	Nov. 26-Jan. 9
Middle Zone	Dec. 1-Jan. 2 & Jan. 5-Jan. 10
South Zone	Dec. 8-Jan. 2 & Jan. 5-Jan. 10 & Mar. 1-Mar. 8
Minnesota	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 26-Jan. 10
Mississippi	
Mourning Doves	Nov. 29-Dec. 21 & Jan. 17-Feb. 9
Ducks, mergansers and coots	Feb. 11-Mar. 10
Missouri	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 6-Sept. 21 & Sept. 24-Oct. 24
Middle Zone	Sept. 6-Sept. 21 & Oct. 1-Oct. 31
South Zone	Sept. 6-Sept. 21 & Oct. 22-Nov. 21
Ohio	
Ducks, mergansers, and coots	Sept. 1-Sept. 16 & Oct. 11-Oct. 12 & Jan. 19-Feb. 16
Tennessee	
* * * * *	
Ducks, mergansers, and coots	Sept. 18-Oct. 27
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Duck Zone	Sept. 1-Sept. 26 & Nov. 26-Dec. 16
South Duck Zone	Sept. 1-Oct. 3 & Oct. 13-Oct. 17 & Dec. 8-Dec. 16
Woodcock	Sept. 1-Sept. 19 & Nov. 4-Dec. 16
Ducks, mergansers, and coots	Sept. 20-Sept. 21 & Jan. 26-Mar. 10

	Extended Falconry Dates
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone and Late Zone	Feb. 22-Mar. 7
Montana (2)	
Ducks, mergansers, and coots:	
Zones 1 and 2	Sept. 24-Sept. 30
* * * * *	
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zone 1	Dec. 8-Dec. 12 & Jan. 12-Jan. 21
Zone 2	Dec. 8-Dec. 12 & Jan. 26-Feb. 4
South Dakota	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone	Sept. 4-Sept. 19 & Sept. 22-Sept.26 & Dec. 10-Dec. 19
Middle Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 26 & Dec. 10-Dec. 19
South Zone	Sept. 4-Sept. 19 & Sept. 22-Oct. 6
High Plains	Sept. 4-Sept. 11
Texas	
* * * * *	
Ducks, mergansers, and coots:	
Low Plains North Zone	Jan. 26-Feb. 9
Low Plains South Zone	Jan. 19-Feb. 2
* * * * *	
PACIFIC FLYWAY	
Arizona	
* * * * *	
Ducks and mergansers:	
North Zone	Oct. 12-Oct. 16
South Zone	Jan. 30-Feb. 3
California	
Ducks, mergansers, and coots:	
Northeastern Zone	Dec. 10-Dec. 11
Colorado River Zone	Jan. 26-Jan. 30

	Extended Falconry Dates
California (cont.)	
Southern Zone	Jan. 26-Jan. 30
Balance-of-State Zone and So. San Joaquin Zone	Nov. 20 & Jan. 26-Jan. 30
Canada Geese:	
Northeastern Zone	Jan. 19-Jan. 23
Southern Zone	Jan. 26-Jan. 30
Balance-of-State Zone (5)	Oct. 18-Oct. 31 & Jan 26-Jan. 30
Southern San Joaquin Zone	Oct. 18-Oct. 31 & Jan. 26-Jan. 30
White-fronted Geese:	
Northeastern Zone	Jan. 19-Jan. 23
Southern Zone	Jan. 26-Jan. 30
Balance-of-State Zone and So. San Joaquin Zone	Oct. 18-Oct. 31 & Jan. 26-Jan. 30
Brant	
Northeastern Zone	Oct. 11-Nov. 9 & Dec. 10-Jan 23
Southern Zone	Oct. 18-Nov. 9 & Dec. 10-Jan. 30
Balance-of-State Zone and So. San Joaquin Zone	Oct. 18-Nov. 9 & Dec. 10-Jan. 30
Light Geese:	
Northeastern Zone	Jan. 19-Jan. 23
Southern Zone	Jan. 26-Jan. 30
Balance-of-State Zone	Oct. 18-Oct. 31 & Jan. 26-Jan. 30
* * * * *	
New Mexico	
* * * * *	
Rails	Nov. 29-Jan. 4
Dark Geese:	
North Zone	Oct. 27-Nov. 2
South Zone	Oct. 11-Oct. 17
Light Geese:	
North Zone	Oct. 27-Nov. 2
South Zone	Oct. 11-Oct. 17
* * * * *	

(2) In Montana, the bag limit is 2 and the possession limit is 6.

* * * * *

(4) In Maine, the daily bag and possession limits for black ducks are 1 and 2, respectively.

(5) In California, the falconry season for Canada geese is closed in the Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.

(6) In Florida, light geese may only be taken north and west of the Suwannee River.

[FR Doc. 03–24447 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Monday,
September 29, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 27, 2003.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (318/305–0643), or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the August 8, 2003, **Federal Register** (68 FR 47424), we proposed special migratory bird hunting regulations for the 2003–04 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the May 6, 2003, **Federal Register** (68 FR 24324), we requested that tribes desiring special hunting regulations in the 2003–04 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, *etc.*);

(c) Steps that would be taken to limit the level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 8, 2003, proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the August 29 **Federal Register** (68 FR 55660). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 8, 2003, proposed rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2003–04 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 19 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on August 8, 2003, closed on August 18, 2003, however, we did not receive any comments. We received one comment regarding the notice of intent published on May 6, 2003, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. We responded to this comment in the August 29 final rule.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)'' was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR

22727). Copies of these documents are available from us at the address indicated under **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the same address.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under **ADDRESSES**.

Executive Order 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Small Business Regulatory Enforcement Fairness Act

The annual migratory bird hunting regulations constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this series of rules has an annual effect on the economy of $100 million or more. However, because these rules establish hunting seasons, we do not plan to defer the effective date of this rule under the exemption contained in 5 U.S.C. 808(1), and this rule will be effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estmates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(B)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, the annual migratory bird hunting rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), November 6, 2000, (3 CFR 2000 Comp., p. 304), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the May 6, 2003, request for proposals and the August 8, 2003, proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and nontribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is amended by revising paragraphs (a), (b), (f), (h), (k), (l), (o), (p), (q), and (s) and by adding paragraphs (t) through (bb) to read as set forth below. (Current § 20.110 was published at 68 FR 51923, August 29, 2003.)

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 2003; then open November 15, 2003, close December 29, 2004.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (Including Mergansers)

Season Dates: Open October 11, 2003, close January 25, 2004.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, and four scaup. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 18, 2003, close January 25, 2004.

Daily Bag and Possession Limits: Four geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 13, close October 19, 2003.

Daily Bag Limit: Three sandhill cranes.

Doves

Season Dates: Open September 1, close October 30, 2003

Daily Bag Limit: 15 mourning doves.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Ducks

Pintail: Open October 4, close December 2, 2003.

Other ducks: Open October 4, close December 16, 2003.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two female mallards), two redheads, one pintail (when open), three scaup, and two wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 18, 2003, close January 20, 2004.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open September 27, close December 21, 2003.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 27, 2003, close January 1, 2004.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

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(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 27, 2003, close January 25, 2004. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays and for a continuous period in the months of October and November. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2003, close September 15, 2003, for the early-season, and open October 4, 2003, close January 25, 2004, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively, for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 15, 2003, close January 26, 2004.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2003, close January 31, 2004.

Daily Bag and Possession Limits: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20.

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(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 29, close December 5, 2003.

Daily Bag and Possession Limits: Eight ducks, including no more than five mallards (only one of which may be a hen), three scaup, one black duck, two redheads, two wood ducks, one canvasback, and one pintail. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit, only two of which can be hooded mergansers.

Coots and Common Moorhens (Common Gallinules)

Season Dates: Open September 29, close December 5, 2003.

Daily Bag and Possession Limits: 12 coots and common moorhens (common gallinules), singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese, White-Fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 1, close November 30, 2003 for all species, and open for Canada geese only, January 1, close February 7, 2004.

Daily Bag and Possession Limits: 5 Canada geese and a combination of 10 of all other species. The possession limit is twice the daily bag limit.

Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag and Possession Limits: 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

Mourning Doves

Season Dates: Open September 15, close November 14, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General:

A. All tribal members will be required to obtain a valid tribal resource card and 2004–04 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

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(k) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-Tailed Pigeons

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails: Open September 27, 2003, close November 25, 2003.

Other ducks: Open September 27, 2003, close January 11, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

Dark Geese

Season Dates: Open September 27, 2003, close January 5, 2004.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).

Ducks (Including Mergansers)

Season Dates: September 27, close November 21, 2003, and open December 1, close December 7, 2003.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), five wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 22, 2003, and open December 1, close December 31, 2003.

Daily Bag and Possession Limits: Three and six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 13, close November 16, 2003.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal member shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

* * * * *

(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads. The season on canvasbacks is closed.

Geese

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2003, through February 29, 2004.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Pintails: The season on pintails is the same as that established by the State of Washington, under final Federal frameworks, to be announced.

Other ducks: Open October 12, 2003, close January 26, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively.

Geese

Season Dates: Open October 19, 2003, close January 26, 2004.

Daily Bag and Possession Limits: Four geese, including four dark geese but no more than three light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 11, 2004, close January 26, 2004.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 14, 2003, close February 28, 2004.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(p) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Pintails

Season Dates: Open November 1, 2003, close December 30, 2003.

Ducks

Season Dates: Open November 1, 2003, close February 8, 2004.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open November 1, 2003, close February 8, 2004.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open November 1, 2003, close February 8, 2004.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are seven and five, respectively.

Mourning Dove

Season Dates: Open September 1, end December 31, 2003.

Daily Bag and Possession Limits: 12 and 20 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(q) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Teal

Season Dates: Open October 18, 2003, close January 31, 2004.

Daily Bag Limit: Six Teal.

Ducks

Season Dates: Open November 1, 2003, and close February 28, 2004.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and one hen eider. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 18, 2003, and close February 28, 2004.

Daily Bag Limit: Seven ducks including no more than four of any one species.

Geese

Season Dates: Open September 13, 2003, and close September 27, 2003, and open November 1, 2003, close February 28, 2004.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second, and 15 snow geese.

Woodcock

Season Dates: Open October 18, 2003, and close November 29, 2003.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

* * * * *

(s) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 11, 2003, close December 9, 2003.

Other ducks: Open October 11, 2003, close January 25, 2004.

Daily Bag and Possession Limits: Four ducks, including no more than three mallards (including no more than one hen mallard), two redheads, one canvasback (when open), and one pintail (when open). The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 11, 2003, close January 25, 2004.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, the area open to waterfowl hunting in the above seasons consists of: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2003–04 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl

hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2003–04 season.

(t) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Nontribal Hunters)

Ducks

Pintails and Canvasbacks (For nontribal hunters only): Open September 27, 2003, close October 26, 2003.

Other ducks: Open September 27, 2003, close November 25, 2003, except shooting hours on opening day and for every hunting day for the remainder of the season would be one-half hour before sunrise and continue to one-half hour after sunset for tribal members. Nontribal shooting hours will go from one-half hour before sunrise to sunset on reservation.

Daily Bag Limits and Possession Limits: The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. The possession limit is twice the daily bag limit.

The Band's Conservation Department regulates nontribal harvest limits under the following regulations: (1) Nontribal hunters must be accompanied at all times by a Band Member guide; (2) Nontribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) Nontribal hunters and Band Members must have only Service-approved nontoxic shot in possession at all times; (4) Nontribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

(u) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 4, close December 2, 2003.

Other ducks: Open October 4, 2003, close January 16, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasback is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open October 4, 2003, close January 16, 2004.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open October 4, 2003, close January 16, 2004.

Daily Bag and Possession Limits: Three and six geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 27–28, 2003.

Daily Bag and Possession Limits: Same as ducks but includes one pintail.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(v) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Pintail

Season Dates: Open September 27, close November 25, 2003.

Other Ducks (Including Mergansers)

Season Dates: Open September 27, close November 30, 2003.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, two redheads, and four scaup. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 27, close November 30, 2003.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(w) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Open October 1, 2003, close January 28, 2004.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines.

(x) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Mergansers and Coots)

Season Dates: Open October 4, 2003, close March 9, 2004.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 18, 2003, close March 9, 2004.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 18, 2003, close March 9, 2004.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 18, 2003, close March 9, 2004.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 27, close September 28, 2003.

Daily Bag and Possession Limits: Same as above.

Nontribal Hunters

Pintail

Season Dates: Open October 4, 2003, close November 11, 2003.

Other Ducks (Including Mergansers and Coots)

Season Dates: Open October 4, 2003, close January 8, 2004.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, and one pintail (when open). The season on canvasbacks is closed. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 18, 2003, close January 20, 2004.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 18, 2003, close January 11, 2004.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 18, 2003, close January 17, 2004, and February 26, 2004, close March 10, 2004.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 27, close September 28, 2003.

Daily Bag and Possession Limits: Same as above.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(y) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Pintails and Canvasbacks

Season Dates: Open October 4, 2003, close December 2, 2003.

Other Ducks

Season Dates: Open October 4, 2003, close January 11, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), one canvasback (when open), one scaup, and two redheads. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

Geese

Season Dates: Open October 4, 2003, close January 4, 2004.

Daily Bag and Possession Limits: Four geese, including not more than three light geese or two white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(z) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

Pintails

Season dates: Open October 1, 2003, close November 30, 2003.

Ducks (Including Mergansers)

Season Dates: Open October 1, 2003, close January 31, 2004.

Daily Bag and Possession Limits: 10 including no more than five hen mallards, two pintail, seven scaup, and five redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively. The daily bag limit on brant is three.

Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(aa) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Off Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2003, close February 25, 2004.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2003, close March 9, 2004.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Pintails and Canvasbacks: Open October 9, close November 16, 2003.

Other ducks: Open October 9, close December 21, 2003.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (no more than two hen mallards), two redheads, one canvasback (when open), one pintail (when open), three scaup, and two wood ducks. The daily bag limit for mergansers is five, of which no more than one can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as other ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Dark Geese

Season Dates: Open October 29, 2003, close January 31, 2004.

Daily Bag and Possession Limits: Three geese, including no more than one white-fronted goose or brant. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2003, close January 19, 2004.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions:

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–24424 Filed 9–26–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
September 29, 2003

Part IV

General Services Administration

41 CFR Part 102–192

Federal Management Regulation; Mail Management; Interim Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–192

[FMR Amendment 2003–2; FMR Case 2003–102–1]

RIN 3090–AH13

Federal Management Regulation; Mail Management

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Interim rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) to extend the deadline for agencies to convert to commercial payment to the United States Postal Service instead of the Official Mail Accounting System (OMAS). This requires amending the interim rule published in the **Federal Register** June 6, 2002, to reflect the extension of the deadline from October 1, 2003, to December 31, 2003. The FMR and corresponding documents are available via the Internet at *http://www.gsa.gov.*

DATES: *Effective Date:* September 29, 2003.

ADDRESSES: Interested parties should submit comments in writing on or before November 28, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*fmrcase.2003–102–1@gsa.gov.*

Please submit comments only and cite FMR Amendment 2003–2, FMR case 2003–102–1 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, at (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Henry Maury, Office of Governmentwide Policy, Mail Communications Policy Division (MTM), at (202) 208–7928. Please cite FMR Amendment 2003–2, FMR case 2003–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) issued the Federal Mail Regulation (FMR) Interim Rule (41 CFR parts 101–9 and 102–192) in the **Federal Register** at 67 FR 38896, June 6, 2002. The Interim Rule states that ''Beginning October 1, 2003, all payments to the United States Postal Service must be made using commercial payment processes, not OMAS'' (the Official Mail Accounting System). This approach has been used successfully by the Department of Defense to make program managers accountable for mail expenditures within the Department and has resulted in dramatic reductions in postage costs. GSA believed requiring this same approach in the Interim Rule would lead to similar benefits among the civilian agencies.

Shortly after we issued the Interim Rule, the Treasury Department asked GSA to reconsider its position on this policy. Treasury pointed out that commercial postage payment mechanisms use arrangements with commercial banks to replenish the postage balances maintained in the postage meters that agencies would be using. Because of the commercial fees involved as well as the negative impact on the overall Federal cash management position, Treasury asked GSA to work with the Postal Service to find a way to keep the money inside the Treasury; that is, to have the agencies continue making payments through the Interagency Payment and Collection System (IPAC), which is how OMAS payments are made today. We assembled an interagency team and worked for a full year on different approaches to accomplish this. The team concluded that in order to satisfy Treasury's request and keep most of the money inside the Government, a small number of high-volume, centrally managed Federal mail programs will have to continue to use the OMAS/IPAC process for the foreseeable future.

However, we are still committed to implementing a more accountable system for making postage payments throughout the Federal government and believe that commercial postage payment processes provide the quickest and simplest way of doing this. Since the negotiation process with the Treasury, the Postal Service, and GSA has taken so long, we are extending the deadline for converting to commercial postage payment processes to December 31, 2003.

Any agency planning to continue using the OMAS/IPAC system beyond December 31, 2003 will have to request a deviation. This requirement applies to agencies planning to use OMAS/IPAC indefinitely and agencies planning to convert to commercial payments after December 31, 2003.

All deviation requests will be required to include a discussion of how the agency has implemented, or plans to implement, an accountable system for making postage payments. Deviation requests that do not address the agency's intentions to install such an accountable system will not be approved. Detailed information on the expected nature and level of detail of such discussions will be included in the guidance on preparing deviation requests. This guidance will be issued by e-mail and Internet publication. The Web site is *http://www.gsa.gov/mailpolicy.*

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–192

Government contracts, Intergovernmental relations, Reporting and recordkeeping requirements, Security measures.

Dated: September 18, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

■ 1. The authority citation for 41 CFR part 102–192 is revised to read as follows:

Authority: Sec. 2, Pub. L. 94–575, as amended, 44 U.S.C. 2904, 40 U.S.C. 121(c).

§ 102–192.50 [Amended]

■ 2. Amend §102–192.50 in paragraph (c) by removing ''October 1, 2003'' and adding ''December 31, 2003'' in its place.

[FR Doc. 03–24339 Filed 9–26–03; 8:45 am]

BILLING CODE 6820–14–P

Federal Register

Monday,
September 29, 2003

Part V

Department of Housing and Urban Development

24 CFR Part 50, et al.
Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 58, 574, 582, 583, and 970

[Docket No. FR–4523–F–02]

RIN 2501–AC83

Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates the list of programs and statutory authorities in HUD's environmental regulation for which other entities may assume HUD's environmental responsibilities. This rule makes other changes to update these regulations that address the assumption of HUD's environmental responsibilities. This final rule also makes conforming changes to the affected environmental provisions contained in various program regulations. This final rule follows publication of a June 26, 2002, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* October 29, 2003.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Office of Community Planning and Development, Room 7244, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000. For inquiry by phone or e-mail, contact Walter Prybyla, Environmental Review Division, Office of Community Planning and Development, at (202) 708–1201, extension 4466 (this is not a toll-free number), or mail to: *Walter_Prybyla@hud.gov.* Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 26, 2002, Proposed Rule

On June 26, 2002 (67 FR 43208), HUD published a proposed rule that would make a number of changes to HUD regulations at 24 CFR part 58. For the convenience of the reader, the Department summarizes here some of the details of the proposed rule published in the preamble to the proposed rule. Readers are referred to the **SUPPLEMENTARY INFORMATION** section of the preamble of the published proposed rule at 67 FR 43208–43210 for a fuller explanation of the rationale or justification for the various revisions in the rule.

The regulations at 24 CFR part 58 implement statutory authorities that permit certain entities other than HUD to assume HUD's environmental responsibilities for various HUD programs. The proposed rule advised that the Department would (1) update the list of programs and statutory authorities covered by part 58, and (2) make conforming changes to environmental provisions in certain program regulations to include a cross-reference to part 58. In addition, the proposed rule would make conforming changes in HUD's regulations at 24 CFR part 50, which govern when HUD is responsible to perform environmental responsibilities in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and other environmental requirements (as specified in 24 CFR 50.4).

The proposed rule described the additional programs that would be added to the list of programs in § 58.1. Among these programs are (1) Grants provided to private nonprofit organizations and housing agencies under the Supportive Housing Program and the Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act; (2) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA); (3) Indian Housing Loan Guarantees under section 184 of the Housing and Community Development Act of 1992; (4) HOPE VI grants for FY 1999 and earlier and HOPE VI grants under section 24 of the United States Housing Act of 1937; and (5) Housing Opportunities for Persons With AIDS (HOPWA) grants under the AIDS Housing Opportunity Act.

The proposed rule also advised that the Rental Rehabilitation Program and the Housing Development Grant Program authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) are no longer in use and would be removed from paragraph (b)(2) of the list in 24 CFR 58.1.

The proposed rule further indicated that the Department would add a new § 58.1(c) and § 58.1(d) to Title 24. New § 58.1(c) clarifies that activities assisted with repayments to a revolving loan fund initially assisted with HUD funds are subject to environmental requirements only if HUD program rules treat the activity assisted with repayments as being subject to federal requirements. New § 58.1(d) clarifies that the Assistant Secretary for Community Planning and Development, to the extent permitted by applicable laws and the regulations of the Council on Environmental Quality (CEQ), may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

The June 26, 2002, rule proposed changes in § 58.2 to the definitions of ''recipient'' and ''responsible entity'' (RE). A new § 58.4(c) was proposed to clarify that under NAHASDA and the Section 184 program, Indian tribes have a choice whether or not to assume environmental responsibilities under 24 CFR part 58.

The rule also proposed updating the list of NEPA-related environmental authorities in § 58.5 to add new requirements similar to those identified in 24 CFR 50.3(i), which apply when HUD performs the environmental review for a project. The proposed rule indicated that environmental reviews for multifamily housing with five or more units (including leasing) and non-residential property must include evaluation of previous site uses and other evidence of contamination on or near the site.

Further, the proposed rule noted revisions to § 58.11 to exclude the term ''Indian Housing'' recipient and to add the term ''HOPWA'' recipient. Additionally, the rule announced that § 58.22(a) would be revised to make it clear that all participants in the development process are subject to the provisions of part 58.

The proposed rule added a new paragraph to § 58.22 to permit an organization, consortium, or affiliate under the Self-Help Homeownership Opportunity Program (SHOP) to advance nongrant funds to acquire land prior to completion of the environmental review process.

The rule also detailed revisions to be made to § 58.33(b) and § 58.35, along with conforming changes to 24 CFR part 50. In addition, the proposed rule included revisions to §§ 58.34(b), 58.45, 58.72, and 58.75. An additional proposal in the rule would add language to 24 CFR parts 574, 582, 583, and 970 to make conforming amendments to reflect the applicability of part 58 procedures.

The proposed amendments to §§ 58.34(b) and 58.35(d) regarding the timing of environmental documentation have been omitted from the final rule.

The proposed amendments to §§ 50.20(a)(2)(i) and 58.35(a)(3)(i) regarding conditions for eligibility for a

categorical exclusion for rehabilitation of buildings for residential use (with one to four units) are modified in the final rule. The threshold that ''the dwellings do not result from a conversion of use from a non-residential use'' is revised in the final rule to read ''the land use is not changed.'' The threshold that ''the footprint of the building is not increased in a floodplain or in a wetland'' is added to the final rule.

The final rule updates the reference to the FHA Multifamily Housing Finance Agency Pilot Program by removing the word ''Pilot'' because the program is now a permanent program. The term ''Pilot'' appears in the current regulation and the proposed rule at § 58.2(a)(5)(vii) and (6).

The Department has decided not to adopt the revisions to 24 CFR 970.4 as published in the proposed rule, in favor of making a simple cross-reference to part 58. The Office of Public Housing Investments, an office under the Office of the Assistant Secretary for Public and Indian Housing, plans to cover the removed guidance in an internal notice dealing with demolition or disposition of public housing projects pending issuance of a broader amendment to part 970 itself.

II. This Final Rule

This final rule follows publication of the June 26, 2002, proposed rule and takes into consideration the 64 public comments received on the proposed rule. The public comment period on the rule closed on August 26, 2002. Comments were received from a federal agency, local housing and community development authorities, housing professionals, an Indian housing authority, city and county governments, housing associations, home inspection services, and several private individuals. In accordance with the consultation provision of the CEQ regulations at 40 CFR 1507.3, HUD submitted for CEQ review and comment the proposed amendment to part 58. The final rule implements HUD's responsibility to identify and regulate HUD-assisted activities subject to NEPA. Section 102 of NEPA requires that all agencies of the federal government identify and develop methods and procedures, in consultation with the CEQ, which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.

In response to the public comments, the following revisions, summarized here and discussed more fully in Part III, are made to the proposed rule.

Section 58.1(b)(10) is revised by adding the new program for Native Hawaiian Housing Block Grants authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with section 806 (25 U.S.C. 4226).

Section 58.2(a)(5)(ix) is revised by adding as a recipient, the Department of Hawaiian Home Lands with respect to NAHASDA assistance under § 58.1(b)(10).

Section 58.2(a)(7)(ii) is revised by adding as a responsible entity, the Department of Hawaiian Home Lands with respect to environmental responsibilities under NAHASDA, when the Department of Hawaiian Home Lands is the recipient.

Section 58.35(a)(3)(i) is revised to clarify the conditions for a categorical exclusion for rehabilitation proposed in the case of buildings for residential use (with one to four units). The conditions are that the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland. The effects of this provision are that: (1) It corrects in the current rule at § 58.35(a)(3) the apparent omission of the topic of ''buildings for residential use (with one to four units)'' by including an explicit reference to this topic in the listing for building rehabilitation activities, because the current listing cites categorical exclusions only for multifamily and non-residential buildings. Although under current regulations neither part 58 nor part 50 refers to the topic of rehabilitation proposed in the case of buildings for residential use (with one to four units), the topic was considered under part 58 as an ''individual action,'' whereas under part 50 it was covered under the generic topic ''rehabilitation of structures.'' The final rule removes this ambiguity; (2) it removes the proposed rule reference at § 58.35(a)(3)(i) to ''dwellings do not result from a conversion of use from a non-residential use'' and substitutes ''the land use is not changed'; (3) it eliminates the need to perform environmental assessments by removing thresholds listed in the current regulations under both parts 50 and 58; (4) it adds a cross-reference within the individual actions criteria at §§ 58.35(a)(4) and 50.20(a)(3) to exclude rehabilitation of buildings for residential use (with one to four units) from the thresholds for individual actions; and (5) this categorical exclusion continues, as in the current and proposed regulations, to be subject to the §§ 58.5 and 58.6 provisions. In addition, this rule amends § 50.20(a)(2) with identical language that applies when HUD itself performs the environmental review under part 50.

III. Discussion of Public Comments Received on the June 26, 2002, Proposed Rule

Comment: HUD should mandate radon testing and remediation, if necessary, of every home, because the Department's failure to enforce the environmental responsibilities required by the rule is contributing to thousands of preventable lung cancer deaths. Specifically, commenters noted that 24 CFR 50.3(i)(1) states HUD's policy that all property proposed for use in HUD programs be free of hazardous materials and toxic substances, among other things, where a hazard could affect the health and safety of occupants. They stated that radon is a carcinogen, which can be inexpensively remediated, yet most home purchasers, in spite of the EPA recommendation, do not order a radon test.

Many commenters cited 24 CFR 50.3(i)(1) in arguing that HUD should enforce the regulation and mandate a radon test of residential property for it to qualify for a Department of Veterans Affairs (VA), Department of Housing and Urban Development (HUD), Federal National Mortgage Association (Fannie Mae), or Federal Home Loan Mortgage Corporation (Freddie Mac) mortgage. Commenters noted that the Government Sponsored Enterprises (GSEs) (regulated by HUD) are the largest source of housing finance in the country. They remarked that industry experts agree that once HUD imposes mandatory testing of radon hazards, the majority of primary market mortgage originators will follow suit.

HUD Response: After a careful review of the comments, the Department has decided not to revise the proposed rule. Mandatory testing of homes for radon hazards under HUD's mortgage insurance programs for single-family home loans is outside the scope of this rulemaking. This rule deals primarily with HUD's grant programs for which HUD's environmental review responsibility is assumed by state, local, and tribal governments for compliance with NEPA and the related laws and authorities.

The Department would add that conforming § 58.5(i) in this final rule to the existing language in § 50.3(i)(1) signals its policy of establishing a uniform standard for dealing with toxic hazards in cases where an environmental review is required to

comply with NEPA and/or the related laws and authorities cited at § 58.5. As stated above, a requirement for mandatory testing for radon hazards for single-family homes is not within the scope of this rule. Nonetheless, the new language in § 58.5 reflects HUD's policy that, regardless of whether the environmental reviews are performed by HUD or by the responsible entity, the same standards would be used. Further, the conforming provision requires that the environmental review of multifamily housing with five or more dwelling units (including leasing) and non-residential property, must include the evaluation of previous uses of the site and other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in § 58.5(i)(1). The provision requires that particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain or may have contained hazardous wastes. The new conforming provision would apply to addressing radon hazards within the context of the environmental review whenever it is known or suspected that such hazards exist.

The Department also notes that there is no HUD review or approval before the completion of construction or rehabilitation and the loan closing for single-family homes whose mortgages are endorsed by the FHA. Consequently, the program is excluded from environmental review regulations under part 50 (see § 50.19(b)(17)). However, environmental underwriting criteria for FHA mortgage insurance programs are listed elsewhere at 24 CFR 203.12(b), relating to ''Builder's Certification of Plans, Specifications and Site'' (Builder's Certification) for mortgage insurance on proposed or new construction of single-family homes. The Builder's Certification form covers ''Other foreseeable hazards or adverse conditions.'' (See 24 CFR 203.12(b)(2)(vi)).

Comment: HUD should remove from the rule the language in part 58 that makes units of general local government, counties, and states responsible for environmental review of HOPE VI projects. The commenter recommended that HUD directly perform environmental review of HOPE VI projects and other projects undertaken by public housing agencies (PHAs) under the programs listed in § 58.1(b). The commenter stated that imposing environmental review responsibilities upon non-recipient entities for such projects diverts limited administrative staff time not only to conduct the environmental review, but also to negotiate agreements with recipients regarding the environmental review work. The commenter noted that these agreements may need to be approved by one or more legislative bodies. The commenter also noted that the statutory authority under which HOPE VI is proposed to be added to part 58 does not require HUD to delegate environmental responsibilities to the non-recipient entities listed in § 58.2(a)(7).

HUD Response: The Department has carefully considered this comment, but declines to change the rule. Accordingly, the final rule is unchanged from the proposed rule on this issue. At this time, many more responsible entities perform environmental reviews for their own complex capital projects and have sufficient experience to be able to do so for other HUD-assisted recipients within their area. Where the responsible entity staff lacks time or skills, then services of consultants are recommended. Consultant support is also recommended in order to support certain kinds of technical environmental analysis.

Generally, negotiating agreements is an established operating practice and need not be viewed as a burden, but as an opportunity to partner. HUD expects responsible entities to reach out to partners and to readily negotiate agreements with public housing agencies and private non-profit organizations seeking environmental services of the responsible entity for their HUD-assisted project or activity. HUD understands that such agreements must comply with state and local laws and in some cases may need approval of the legislative body, as pointed out by respondents.

This rule is an environmental rule and therefore does not cover findings of consistency with the Consolidated Plan; however, such findings are required for the HOPE VI Program listed at 24 CFR 91.2(b)(12), Revitalization of Severely Distressed Public Housing. HUD has the discretion to perform environmental reviews, but such performance would be inconsistent with HUD's general direction to devolve this federal function for its grant programs to state, local, and tribal governments. HUD believes that effective environmental review and administration is best performed by the responsible entity. While HUD encourages units of general local government, counties, and states to perform environmental reviews for HOPE VI projects, such governments are not required to do so when they are not the recipient of the HOPE VI assistance. HUD does not believe it advisable to prohibit any unit of a local government, county, or state from performing environmental reviews for PHAs under part 58 when many are willing to do so.

Comment: A commenter objected to the proposed change in §§ 58.1 and 58.2 that would make a governmental jurisdiction that is not providing the federal funding responsible for the environmental review for the assisted project. The commenter expressed concern that this rule change could force a certifying officer into court to defend a project in which the officer has no influence. The commenter asserted that effective environmental review and administration lies solely with the funding agency.

HUD Response: The final rule makes no change to the proposed rule in response to this comment. Generally, environmental litigation results from failure of the project managers to perform the requisite environmental review or to address environmental impacts satisfactorily. HUD believes that certifying officers, who are generally the top elected officials of the jurisdiction, are in a better position than the funding agency alone to guide and defend projects within their jurisdiction. The certifying officers live in their jurisdictions and are involved with governing their jurisdictions—including sitting on or appointing directors to boards of public housing agencies and private non-profit organizations. Responsible entities and their certifying officers, in performing environmental reviews under part 58, have no less authority than HUD under part 50. Either party is under the same legal duty to ensure full compliance with statutory and regulatory requirements for environmental quality irrespective of the type of HUD-assisted recipient, developer, or project.

HUD disagrees with the comment that effective environmental review and administration lies solely with the funding agency. HUD, as the funding agency, has a partnership role to play, but HUD partners with the local government that has jurisdiction and competency. At the project level, the responsible entity is the local government that ''governs'' by providing land use planning and consolidated planning; by permitting, through zoning, building, and building occupancy approvals for projects that are assisted by HUD; and by supplying infrastructure support for these projects. Thus, HUD believes the certifying officers and responsible entities are already involved with HUD-assisted projects.

The assumption of federal environmental responsibilities by tribal, local, and state governments is virtually unique among federal agencies. This assumption reflects the transfer of full authority to local, state, or tribal governments for environmental quality and protection for HUD-assisted projects, including the monitoring and implementation of any mitigation that the responsible entity requires. HUD believes that effective environmental review and administration is best performed by the responsible entity and not by the federal funding agency.

Comment: HUD's Office of Native American Programs requested the addition to § 58.1(b)(10) of the Native Hawaiian Housing Block Grants program authorized by section 513 of American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) and section 203 of the Omnibus Indian Advancement Act (Pub. L. 106–568, approved December 27, 2000), each of which amended NAHASDA by adding a new title VIII. Section 806 of NAHASDA, as amended, authorizes HUD to permit the Director of the Department of Hawaiian Home Lands to assume environmental review responsibilities.

HUD Response: The final rule adds the Native Hawaiian Housing Block Grants program to § 58.1(b)(10).

Comment: Several commenters felt that an American Society for Testing and Materials (ASTM) Phase I assessment is a possible means for complying with § 58.5(i). As an alternative, some commenters suggested a simple ''reasonableness'' test and recommended that the regulation provide that grantees must determine to a reasonable level of certainty, as determined by the grantee, that sites are free of hazardous materials and other deleterious substances. One commenter wrote that the proposed amendment would create significant new cost and other burdens for Community Development Block Grant (CDBG) and HOME grantees. Another commenter wrote that requiring properties to be free of hazards without providing a safe harbor leaves a governmental jurisdiction potentially liable for damages caused by unknown or undiscovered hazards.

HUD Response: The final rule makes no change to the proposed rule in response to this comment. The policy in proposed § 58.5(i) requires due diligence in accordance with the language in that section, but is not intended to suggest any liability for damages caused by unknown or undiscovered hazards where an appropriate review has been performed. In addition, the policy that sites be free from hazardous materials, etc., does not require a complete absence of such materials, but only that the property be free of hazards where the hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The policy also does not prescribe any specific form of remediation, which may vary depending upon the nature of the hazard.

With respect to the issue of costs, in most cases, the cost of the environmental study is eligible for HUD funding as administrative or project costs. The potential remediation costs to owners of existing property who are primarily interested in doing rehabilitation work or facade-type improvements are all costs that are eligible for HUD funding as project costs or for funding under other federal programs. There should be no financial burden to affected property owners benefiting from federal financial assistance to identify and remediate environmental hazards on their property. Significant benefits accrue to the value and desirability of the property. Generally, the benefits of remediation outweigh the costs. Remediation provides a safer environment, which the final rule advances in support of meeting a national goal of a suitable living environment expressed in housing and NEPA legislation.

The criteria in § 58.5(i) rely on a general performance standard. Section 58.5(i) does not require a Phase I environmental assessment for toxics (American Society for Testing and Materials, ASTM E 1527). Certainly, a Phase I report or equivalent analysis is a possible means for complying with § 58.5(i). Some HUD programs already require a Phase I report, a standard of private real estate transactions. Visual inspection of the property may not disclose enough information to ascertain toxic contamination. Permission of the property owner is a routine procedure for examining or testing on-site of a site that is not under the control of the prospective purchaser or environmental reviewer. Such permission includes testing, if the site is suspected or known to contain toxic contaminants. Checking existing federal, state, or local databases is routine procedure for the environmental review, but such databases are not all inclusive and up-to-date. Due diligence is required in making such determinations.

When HUD itself is responsible for performing the environmental review, the policy under § 50.3(i) is not to approve the provision of financial assistance to residential properties located on contaminated sites that are not found to meet the criterion in current § 50.3(i)(1). Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include, but are not limited to, sites which: (1) Are listed on an Environmental Protection Agency (EPA) Superfund National Priorities list or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*) (CERCLA) list or equivalent state list; (2) are located within 3,000 feet of a toxic or solid waste landfill site; or (3) have an underground storage tank that is not for residential fuel. For any of these conditions, the recipient provides HUD with an American Society for Testing and Materials (ASTM) Phase I environmental assessment for toxics report or equivalent analysis.

Comment: Some commenters objected to the provision in §§ 58.5(i)(2) and (3) requiring environmental review of multifamily housing and non-residential properties to include evaluation of previous site uses and other evidence of contamination on or near the site or in the general proximity. Commenters said that it is not possible to identify hidden conditions such as drug labs or other hazards out of plain sight. Five commenters recommended that the requirement should be limited to a reasonable determination of potential hazards that might include checking existing federal, state, and local databases that contain information on contaminated properties.

HUD Response: The final rule makes no change to the proposed rule in response to the commenters' objections. In general, multifamily housing refers to five or more units within one building. Properties are to be ''free'' of hazards that affect the health and safety of occupants or conflict with the intended utilization of the property. The rule sets a performance standard that includes evaluation of previous uses of the site and evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards. Unacceptable sites are to be disapproved, unless the site can be made acceptable by the remediation of the toxic contaminants. Due diligence is the norm. The rule does not create a basis for liability of responsible entities for contamination or the effects of contamination that are not discovered as the result of the exercise of due diligence. Certainly, checking federal, state, and local data banks on toxic hazards is necessary, but the absence of the property in such data banks is not always conclusive on the hazards issue.

Comment: Some governmental jurisdictions may determine that under the § 58.5(i) standards, the potential legal or financial exposure is too high and would limit the range of activities they fund with CDBG and HOME funds. The commenter was of the opinion that property owners are unlikely to enter into purchase agreements that include contingencies allowing on-site testing of their property by a prospective purchaser or environmental reviewer to determine the presence or absence of toxic contamination.

HUD Response: Among HUD's missions is promotion of the national goal that every American family be able to afford a decent home in a suitable environment, and HUD's CDBG and HOME programs support that national goal. Accordingly, we disagree with the commenter's opinion that the potential legal or financial exposure is too high and would limit the range of activities that local governments fund with CDBG and HOME funds, should HUD implement § 58.5(i). That section simply conforms part 58 with identical policy at § 50.3(i), which, since 1996, HUD itself applies when HUD staff perform environmental reviews under part 50.

HUD does not share the commenter's opinion that property owners are unlikely to enter into purchase agreements that include contingencies allowing on-site testing of their property by a prospective purchaser or environmental reviewer to determine the presence or absence of toxic contamination for a HUD-assisted project. The federal subsidy is a significant incentive to ensure the cooperation of most property owners in this matter.

Comment: A commenter questioned the rationale for not requiring site evaluation for residential buildings with fewer than five units. The commenter wrote that a contaminated site would present environmental issues regardless of the number of people who will be served by the site.

HUD Response: The final rule makes no change to the proposed rule, but in response to the comment, HUD provides this clarification. The final rule renumbers the section in question. Section 58.5(i)(2)(i) of the final rule applies to all properties (*i.e.*, ''covered'' properties) that are being proposed for use in HUD programs covered under § 58.1(b) (*i.e.*, ''covered'' programs). Section 58.5(i)(2)(ii) applies specifically to multifamily residential properties and to non-residential properties proposed for use in ''covered'' programs; and it requires an evaluation of previous uses of the site or other evidence of contamination on or near the site. HUD clarifies that the language of §§ 58.5(i)(2)(iii) and (iv) is not limited in its application to multifamily residential properties and to non-residential properties, but applies to all ''covered'' properties, including buildings for residential use (with one to four units). The language of § 58.5(i)(2)(iii) requires that particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes. The language of § 58.5(i)(2)(iv) requires the responsible entity to use current techniques by qualified professionals to undertake investigations determined necessary. In addition, HUD clarifies that all ''covered'' properties may include those properties subject to a categorical exclusion under § 58.35(b) in cases of extraordinary circumstances in accordance with § 58.35(c).

Comment: Not enough emphasis is made in the proposed rule on the high level of priority that should be placed on expediting environmental reviews, since the environmental review process can be a lengthy one that slows the funding and expending of HUD grant funds. The commenter suggested that the rule provide positive incentives to expedite the environmental review process as HUD adds new programs and entities to part 58.

HUD Response: The most significant incentive is intrinsic in the current part 58 regulations, because delays can be prevented by the recipient responsible entity since the calendar and pace of performing the environmental procedures is under the control of the responsible entity itself. With respect to non-recipient responsible entities, the final rule makes no change to the proposed rule to provide additional incentives to expedite the environmental review process as HUD adds new programs and entities to part 58. HUD believes that the current regulations provide the following incentives: (1) § 58.23 provides that the environmental review costs are eligible costs to the extent allowable under the HUD assistance program regulations. The assurance of payment for work performed is an incentive in expediting environmental reviews. Also, §§ 58.34(a)(1) and (3), respectively, exempt from environmental review procedures both ''environmental and other studies'' as well as ''administrative and management activities.'' This exemption extends to the costs of environmental consultants and/or payments to local governments for this service; (2) The regulations provide an opportunity for closer partnering arrangements among all local partners providing housing and economic opportunities to achieve the responsible entity's Consolidated Plan targets. HUD's local partners include local governments, public housing agencies, private non-profit and for-profit organizations. Such local arrangements should provide for time-efficient management of environmental reviews; (3) The regulations provide policy guidance to private non-profit organizations and public housing agencies requiring them to supply the responsible entity with all available, relevant information necessary for the responsible entity to perform for each property any environmental review required under part 58; (4) This rulemaking would expedite environmental reviews by simplifying the provision that provides a categorical exclusion for rehabilitation assistance in the case of a building for residential use (with one or four units) and a categorical exclusion for the approval of supplemental assistance to a project previously approved under this part; and (5) Often overlooked is the provision in the CEQ regulations that requires responsible entities to integrate the NEPA process with other planning ''at the earliest possible time'' to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts (40 CFR 1501.2).

Section 58.30(b) states that the environmental review process should begin as soon as a recipient determines the projected use of HUD assistance. The prohibition on commencing choice-limiting activities under § 58.22 and CEQ regulations at 40 CFR 1506.1 until after the environmental review process is completed may be an additional incentive to expedite the review.

Comment: The term ''any participant in the development process'' is not defined in the rule. The commenter observed that proposed § 58.22 would prohibit any participant in the development process from committing non-HUD funds or undertaking an activity on a project that would have an adverse environmental impact or limit the choice of reasonable alternatives prior to release of funds. The commenter recommended limiting the application of the prohibition to subrecipients and adding the cited term to the definition of subrecipient in § 58.2(a)(5).

HUD Response: The Department did not incorporate this recommendation in the final rule. HUD does not believe that the phrase ''any participant in the development process'' needs further

clarification. The phrase covers the recipient's clients and partners that are project participants, such as public or private, non-profit or for-profit entities and their contractors. To narrow the application of this phrase to subrecipients is contrary to the intent of this provision to provide a broad and all-inclusive application of the phrase. The final rule would continue the generic usage contained in the proposed rule.

Comment: The rule should allow responsible entities approving supplemental assistance to a previously approved project to treat such projects as categorically excluded and not subject to § 58.5 authorities when the part 58 review and approval was conducted by a different responsible entity from the one that conducted the environmental review on the original project.

HUD Response: Section 58.35(b)(7) in both the proposed and final rule requires that the approval for the supplemental assistance be made by the original responsible entity. The original responsible entity has the environmental review record for the project and is more knowledgeable about the original project. For that reason, HUD believes that the original responsible entity can best judge whether supplemental assistance is eligible to be treated as a categorical exclusion not subject to the related laws, particularly since this judgment requires a determination by the original responsible entity under § 58.47 as to whether re-evaluation of the original environmental findings is required. Additionally, the Department views all the participants in the process as partners.

Comment: The existing requirement in § 58.22 restricting development before HUD approvals are received as ''choice-limiting'' actions is unworkable and most likely is misinterpreted. The commenter recommended modifying the restriction on ''committing'' HUD funds to a project until HUD has approved a Request for Release of Funds (RROF). The commenter said that many projects may have already been approved by other environmental processes and that construction may be underway before HUD funding is ''committed'' to the project. The commenter suggested substituting the word ''expended'' for the word ''committed'' to denote that while allocation of HUD funds is permissible, the actual expenditure of HUD funds is not permissible until the RROF has been approved.

HUD Response: The final rule makes no change to the proposed rule in response to this comment. The term ''commit'' is broader and includes the meaning of the term ''expend.'' The intent in using the term ''commit'' is to prevent any ''choice-limiting'' action from occurring prior to HUD or state approval of the environmental certification of compliance and the request for the release of funds for the HUD-assisted project. This provision does not affect the recipient's general allocation of funds, but only restricts commitment of such funds to choice-limiting actions, for example, site-specific activities such as real property acquisition, leasing, demolition, rehabilitation, and related site improvements.

The commitment to a HUD-assisted project of HUD and non-HUD funds by the recipient and its partners prior to completion of the environmental review and submission and approval of the recipient's environmental certification of compliance and request for the release of funds inherently diminishes and biases objective consideration of alternative locations for the proposed project (including a no action alternative). The Department believes that the consideration of alternatives is fundamental to the environmental review process for HUD-assisted projects complying with the procedures of part 58.

CEQ regulations at 40 CFR 1502.2(f) require that agencies not commit resources prejudicing selection of alternatives before making a final decision. The regulations at 40 CFR 1506.1 address limitations on actions during the NEPA process. Applicable statutes and regulations set decision points for environmental review and compliance for the various authorities at §§ 58.5 and 58.6. This standard is not in any way diminished by the participation of non-federal funding of the project.

As more programs are added to § 58.1(b) where the recipient is different from the responsible entity, and based on HUD's recent program experience, it is necessary for HUD to be clear in the rulemaking regarding this important environmental compliance issue. This demonstrates the need for responsible entities and recipients other than responsible entities to help each other perform timely compliance with part 58 with all partners selected to implement HUD-assisted projects. Substituting the words ''not expend'' for the words ''not commit'' as suggested by the respondent would not address HUD's concern. The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds for a development by a party before the party applies to the part 58 recipient for federal funds for the project. Thus, a third party may begin a project in good faith as a private project and by so doing is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is completed in accordance with procedures under part 58.

Comment: The ''choice-limiting'' requirements in 24 CFR 58.22 are overly restrictive. Two commenters wrote that there may be numerous ''choice-limiting'' requirements imposed upon a development even before HUD funding is available. The commenters want a distinction made in § 58.22 to recognize that ''choice-limiting'' requirements may not always be negative. For example, the imposition of requirements under the Endangered Species Act before the approval of the RROF should not be considered as limiting environmental choices. Further, §§ 58.22(a) and (c) would restrict development with non-HUD funds if an application for HUD funding was under consideration and the grantee was aware that some ''choice-limiting'' was going to or had already taken place. The commenters argued that the recipient has no way of knowing until the approval process is complete whether a particular application will or will not be funded. Additionally, the recipient has no legal authority to stop or limit development by an applicant before HUD funds have been committed to the activity. Also, many of the ''choice-limiting'' conditions would most likely be imposed upon the development anyway. The commenters recommended that HUD reconsider its policy of defining land acquisition as a ''choice-limiting'' activity, asserting that neither NEPA nor the CEQ regulation at 40 CFR 1506.1 defines ''choice-limiting'' activity.

HUD Response: The Department declines to adopt the commenters' recommendation here. Use of the term ''choice-limiting'' in this regulation does not apply to mitigation measures, as implied in the comment. The term applies to limitations on actions during the environmental review process as prescribed by the CEQ regulations for implementing the procedural provisions of NEPA (40 CFR 1506.1(a)).

HUD has reviewed court decisions on whether land acquisition or similar actions are choice-limiting activities under NEPA. Six federal circuit courts including the DC Circuit Court have

considered this issue. All six have ruled that land acquisition is a choice-limiting activity under NEPA. Two of these cases were appealed to the Supreme Court, which denied certiorari both times. Accordingly, the provisions of § 58.22 prohibiting the commitment of HUD or non-HUD funds for acquisition of property to be used in a HUD-assisted project before an environmental review is completed reflect existing case law on this point, which is law in all of the federal circuit courts that have ruled on this point and law that the U.S. Supreme Court has twice declined to overturn.

Comment: Four commenters wrote that any restriction on the ability to invest HUD funds in developments that are already underway could have a harmful effect on a grantee's ability to comply with CDBG program requirements for timely expenditure of grant funds.

HUD Response: The final rule is unchanged from the proposed rule with respect to this issue. In most cases, the cause of the delay in the recipient's expenditure of grant monies may be attributed to factors other than that of compliance with environmental review processing under part 58. Part 58 allows state, local, and tribal governments and other recipients to set and manage the schedule of their environmental review processing. CEQ regulations at 40 CFR 1501.2 require agencies to integrate the NEPA process with other planning at the earliest possible time. This requirement is intended to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

Moreover, as noted in response to a previous comment, the restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds for a development by a party before the party applies to the part 58 recipient for federal funds for the project. Where a third party has begun a project in good faith as a private project, the part 58 recipient is not precluded from considering a later application for federal assistance for the project, but must advise the third party applicant to cease further choice-limiting actions on the project until the environmental review is completed.

Comment: The final rule should clarify the term ''nominal'' as used in current § 58.22 for real estate options. The commenter asked whether it is a percent of the purchase price.

HUD Response: The final rule makes no change to the proposed rule in response to the commenter's request for clarification. Real estate options are subject to the conditions regarding environmental acceptability and nominal price at § 58.22(d). The provision allows some flexibility regarding the term ''nominal'' and any reasonable interpretation is acceptable. In most instances, the deposit is not refundable if the property buyer fails to exercise the real estate option by purchasing the property within the defined time period.

Comment: The final rule should eliminate the proposed changes to § 58.22, because the changes would place unenforceable burdens on recipients to police the actions of subrecipients during the application phase. The commenter objected to the proposed changes for two reasons. The first concern is that recipients would be expected to analyze whether potential subrecipients are ''about to take an action within the jurisdiction of the recipient that is prohibited by § 58.22(a).'' The second concern of the commenter is the requirement that if the recipient becomes aware that a subrecipient is about to take a prohibited action, ''the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.'' It is unclear, in the view of the commenter, what would constitute ''appropriate action'' and what the recipient's actual responsibilities would be under this requirement. Some nationwide recipients are not in a position to determine NEPA's objectives at the local level nor to enforce them with their subrecipients. A recipient of HUD funds can ensure that its own and its subrecipients' actions conform to the HUD environmental review process once a legal relationship exists and HUD funds have been allocated and disbursed. But, wrote the commenter, recipients lack both the jurisdiction and enforcement power that would be required by proposed § 58.22(c) during the application phase.

HUD Response: The final rule makes no change to the proposed rule with respect to the commenter's first concern. The disqualification for the use of HUD assistance for violation of the limitation on activities pending clearance itself serves to influence the behavior of potential subrecipients. In fact, the rule provides the requisite power to enforce appropriate action. The final rule at § 55.22(c) states that ''if a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by § 58.22(a), then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.'' To enforce compliance with this procedure, the final rule requires that recipients, whether responsible entities or recipients other than responsible entities, be effectively responsible for establishing internal controls. The controls would prohibit the recipients' public and private development partners from the commitment and expenditure of HUD and non-HUD funds to implement a HUD-assisted project prior to compliance with part 58. These controls should apply to applicants, potential awardees, or development partners selected by the recipient.

The Department also carefully considered the commenter's second point, but declines to change the proposed rule in response to the comment. As stated earlier, HUD believes that the recipient has both the jurisdiction and the power to act under this provision. In the first place, the recipient, when seeking prospective applicants or potential developers, has the authority to market its relationship with conditions. The recipient may mandate that no implementation of the project to be assisted with HUD funds is to occur until there is compliance with part 58. During and after the application phase, recipients must refuse HUD assistance to an applicant or developer who has violated the provision for limitations on activities pending environmental clearance. HUD looks to recipients to enforce this provision as they approve or disapprove either applications for HUD financial assistance or partners in the development of HUD-assisted projects. The provision in § 58.22(c) simply serves to emphasize a provision in the CEQ regulations (40 CFR 1506.1(b)) that already applies to responsible entities under part 58, and also to apply these responsibilities to recipients regardless of whether they are the responsible entity.

Comment: Four commenters suggested that HUD should not amend the public comment periods in § 58.45 to reflect that the periods are minimum periods. The commenters objected to the proposed amendment on the basis that a person who fails to respond within the 15-day period could conceivably persuade a court that the comment period for a specific project was not long enough. Thus, if no maximum period is stated, a court could determine that the comment period could be any length of time. The result would be to delay needed development and negatively impact CDBG timeliness

requirements. Another commenter suggested eliminating the word ''minimum'' to avoid confusion that may be caused by the different interpretations of the word.

HUD Response: The Department was not persuaded to make changes to the proposed rule on this matter. The provision requires the minimum number of days for public comment periods. The rule does not require any longer comment period, but provides the responsible entity with the authority and flexibility to extend the number of days for public comment beyond the minimum number of days. The Department does not share the commenters' view on the possible actions a court may take.

Comment: Proposed § 58.75 language should be revised to parallel the prohibition in § 58.22 so that the basis for an objection is clearly limited to projects that have an adverse environmental impact or limit the choice of reasonable alternatives. The commenters wrote that the proposed rule would allow objections on the basis of a recipient or other participant having incurred costs or committed funds even if there was no actual adverse environmental impact or no actual limitation on the choice of reasonable alternatives.

HUD Response: The final rule makes no change to the proposed rule on this matter. The objection in § 58.75(e) as stated in the proposed rule is similar to the current regulations, because the limitation on activities pending clearance applies to both HUD and non-HUD funds for HUD-assisted projects. In contrast, the reference in the last sentence of § 58.22(a) on limitations on actions that have an adverse environmental impact or limit the choice of reasonable alternatives is too restrictive to be repeated as a more general basis for objection in § 58.75, because the language applies only to limitation on the use of non-HUD funds. The basis for objection in proposed § 58.75(e) does not refer to *all* incurring of costs or commitment of funds, but specifically refers only to those commitments of funds, incurring of costs and undertakings ''not authorized by this part.''

Comment: The commenter welcomes the proposed change that clarifies the categorical exclusions for (1) rehabilitation of one to four family units, and (2) individual actions on one to four family units.'' The commenter wrote that the intent to identify the rehabilitation of 1–4 unit residential buildings within this exclusion is a welcome clarification, which codifies a practice HUD has endorsed for years. The commenter wrote that it is not clear from the reading of the proposed language whether this means all rehabilitation of buildings for residential use (with one to four units) is categorically excluded, or whether rehabilitation of these units needs to be less than 75 percent of replacement value, as the current threshold is for multifamily dwellings (or meet some other threshold value). The commenter wants the **SUPPLEMENTARY INFORMATION** reference to ''minor rehabilitation'' clarified in the final rule.

HUD Response: The final rule is not changed in response to the comment. With respect to environmental review procedures for all rehabilitation of buildings for residential use (with one to four units), the final rule allows a categorical exclusion subject to § 58.5 except that an environmental assessment is required only in the following circumstances: (1) the density is increased beyond four units; (2) the land use is changed; (3) the footprint of the building is increased in a floodplain or in a wetland; or (4) there are extraordinary circumstances (§ 58.35(c)). Under the final rule, the limitation on rehabilitation costs to 75 percent of replacement value applies only to multifamily residential buildings and non-residential structures, and does not apply to rehabilitation of buildings for residential use (with one to four units).

The final rule replaces the following criterion contained in the proposed rule: ''* * * the dwellings do not result from a conversion of use from a non-residential use'' (proposed rule at §§ 50.20(a)(2)(i) and 58.35(a)(3)(i)) with a criterion that ''the land use is not changed.'' HUD wishes to clarify the application of the provisions regarding ''change in land use'' found in the final rule at § 50.20(a)(2)(ii)(B) and (iii)(B) and its counterpart in part 58 in the current regulations, redesignated in the final rule as §§ 58.35(a)(3)(ii)(B) and (iii)(B). As a condition of eligibility for this categorical exclusion, the proposed project or activity must meet the condition that there will be no change in land use. When one reads the ''categorical exclusion'' sections of parts 50 and 58, the existing land use of the property and not its future land use is always the threshold to be used for determining eligibility for categorical exclusion. Any conversion or ''change in land use'' made to an existing property is ineligible for a categorical exclusion for rehabilitation and a full environmental assessment is required. The environmental assessment itself focuses its evaluation primarily on the future land use of the property and the prospective and potential impacts resulting from the proposed land use.

Comment: The final rule should clarify the terminology in §§ 58.35(a)(3)(i) and (4). One commenter wrote that using the two phrases, ''single-family residential building'' together with ''one to four units'' conflicts because standard planning terminology suggests that a single-family residential building is one family per building. This term should be changed to read ''Single buildings for family residential use (with one to four units)''.

HUD Response: The final rule revises the phrase published in the proposed rule to read ''a building for residential use (with one to four units)'' in § 58.35(a)(3)(i) and its counterpart § 50.20(a)(2)(i). The rule removes from usage the phrase ''one-to four-family dwelling'' appearing in the current regulations at §§ 50.20(a)(3) and 58.35(a)(4). Generally, HUD considers five or more units within a residential building as multifamily housing, a term established for the internal administration of its mortgage insurance programs. Fewer than five units within a residential building are generally considered single-family housing. This explains the origins of the terms in HUD environmental and program regulations. The final rule replaces the term ''one-to four-family dwelling'' that is used in the current regulation.

Comment: The final rule should clarify the proposed language at §§ 58.35(a)(4)(i) and (ii) with respect to exclusion of an ''individual action'' on a one-to four-unit dwelling when there are no more than four dwelling units on any one site, whether in one or multiple buildings. According to the commenter, this particular categorical exclusion is unwieldy to apply in the field. A clear definition is needed regarding what an ''individual action'' is on a one-to four-family dwelling. The commenter asked the question, ''Is it only new construction or new construction and substantial rehabilitation (depending on the intent of § 58.35(a)(3)(i))?'' The commenter also wrote that the proposed language does not account for circumstances in a program of ''scattered sites'' where sites may be widely dispersed, but where there may be a limited number of homes that happen to be within 2,000 feet of each other. If the project is classified as categorically excluded, does the project sponsor have to guarantee that every site will be more than 2,000 feet apart? The commenter suggested adding the following language to § 58.35(a)(4)(ii) ''or there are not more than four units within 2,000 feet of each other.''

HUD Response: In response to this comment, the final rule amends the proposed rule language of the § 58.35(a)(4) and 50.20(a)(3) provision for ''individual actions'' by adding a cross-reference to the end of §§ 58.35(a)(4) and 50.20(a)(3) to exclude rehabilitation of a building for residential use (with one to four units) from the thresholds for individual actions. As discussed earlier, §§ 58.35(a)(4) and 50.20(a)(3) of the final rule will no longer apply to the rehabilitation of buildings for residential use (with one to four units), because the topic is covered under a new, separate provision at §§ 50.20(a)(2)(i) and 58.35(a)(3)(i) located with related rehabilitation thresholds for categorical exclusions pertaining to multifamily residential buildings and non-residential structures. Sections 58.35(a)(4) and 50.20(a)(3) of the final rule will continue to apply to all other types of individual actions (including, but not limited to, new construction, development, demolition, and acquisition, disposition, or refinancing regardless of future use) with respect to dwelling or housing units that meet the conditions in §§ 50.20(a)(3)(i) and (ii) and §§ 58.35(a)(4)(i) and (ii).

Although the 2000-foot standard was questioned, no other standards were suggested in any of the comments. The rationale for this threshold for an environmental assessment is based on the principle of aggregation and the need to examine the cumulative environmental effects (40 CFR 1508.7) of scattered site housing construction taking place in close proximity. This is consistent with the current provision in § 58.32, which calls for project aggregation of activities that are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

Comment: The Environmental Protection Agency (EPA) requested that HUD encourage responsible entities to limit distribution of the Findings of No Significant Impact (FONSI) notices to EPA regional offices, and not to send copies to EPA Headquarters in Washington, DC. The EPA also made two recommendations: (1) That HUD's formats for FONSIs add provisions to improve the description of the project and a good map; and (2) that HUD clarify that the EPA may review HUD environmental assessments, but that EPA does not reach a determination on the grant application; however, EPA may provide its views on the environmental document to the responsible entity or HUD.

HUD Response: Section 58.43(a) of the current rule remains unchanged. However, in response to the EPA comment, HUD will incorporate in guidance addressed to HUD staff and program participants the following information: (1) When sending FONSI notices and Notices of Intent to Request the Release of Funds (NOI/RROF) to EPA, responsible entities are not to send copies to EPA Headquarters in Washington, DC, but only to regional offices of the EPA having jurisdiction over the responsible entity; (2) notices sent to EPA regional offices should include a full description and location of the project; and (3) responsible entities are discouraged from requesting that the EPA serve as a lead or cooperating agency in preparing environmental assessments and impact statements for HUD-assisted projects. The role of the EPA is not to prepare, but rather to evaluate and comment on these documents.

Comment: The EPA suggested that HUD further define the categorical exclusion in § 58.35(a)(3)(i) by adding the following language at the end of § 58.35(a)(3)(i): ''and which exterior building dimensions are not increased in a floodplain or in a wetland.''

HUD Response: HUD agrees, but has substituted the wording ''and the footprint of the building is not increased in a floodplain or in a wetland'' in lieu of EPA suggested wording. The wording ''and the footprint of the building is not increased in a floodplain or in a wetland'' is added to the final regulation at § 58.35(a)(3)(i) for the environmental review of proposed rehabilitation of buildings for residential use (with one to four units). The added language serves as a threshold for requiring an environmental assessment so as to evaluate and alleviate the environmental effects in cases where rehabilitation assistance is proposed for expanding the footprint of buildings for residential use (with one to four units) where such expansion is located within or would enter the floodplain or wetland. The added language is directly relevant in the case of minor repairs or improvements to one-to four-family properties that are currently excluded from HUD floodplain management decision-making procedures under 24 CFR 55.12(b)(2). The exclusion allowed at § 55.12(b)(2) does not apply to financial assistance for proposed rehabilitation of multifamily residential buildings and non-residential buildings. The exclusion is limited to ''[f]inancial assistance for minor repairs or improvements on one-to four-family properties that do not meet the thresholds for 'substantial improvement' under § 55.2(b)(8).''

Comment: Partially exempt projects in § 50.20 should be exempt from all federal environmental laws and should be moved to § 50.19. The commenter asserted that since these uses of federal funds involve no significant changes to structures that already exist, a presumption should apply that their repair or purchase cannot affect any federal environmental interest protected by federal law. The commenter said that compliance with the numerous laws listed in § 50.4 imposes a significant and costly administrative burden on Indian tribes that assume NEPA responsibilities. The commenter recommends moving to § 50.19 the categorical exclusions in §§ 50.20(a)(2) and (a)(4) when there is no change in the use of the structure, and revising § 50.19 to require compliance with the Historic Preservation Act only if the structure is over 50 years old.

HUD Response: The final rule makes no change to the proposed rule in response to this comment. First, HUD notes that part 58—not part 50—is applicable to Indian tribes that assume NEPA responsibilities. Under §§ 58.34 and 58.35(b), HUD has excluded from review those actions that by their nature do not trigger compliance requirements under NEPA and related authorities listed in § 58.5. However, environmental laws listed in § 50.4 and § 58.5 can apply to the actions listed in §§ 50.20(a)(2) and (4) and the comparable actions in §§ 58.35(a)(3) and (5). HUD lacks the authority to provide exemptions and exclusions from applicable statutory requirements and therefore cannot do what the commenter suggests under either part 50 or part 58. Compliance is mandatory whenever HUD funds are proposed for projects and activities subject to any of the related federal environmental laws and authorities cited in §§ 58.5, 58.6 and 50.4 ''as applicable.'' To the extent that HUD has authority, the rule provides relief in the case of categorical exclusions from the environmental assessment required under NEPA as allowed by the CEQ regulations. However, there are certain national objectives that each of the related federal environmental laws and authorities is designed to achieve at the project level through the support of federal financial assistance. The national objectives cover historic preservation, protection from toxic chemicals or radioactive materials, protection from flood hazards, protection of wetlands and coastal barrier resources, protection of endangered species, protection of sole

source aquifers, environmental justice, environmental standards, and others.

The current provision at § 58.34(a)(12) allows an exemption for any categorical exclusion listed in § 58.35(a), provided that there are no circumstances that require compliance with any other federal laws and authorities cited in § 58.5. A recipient does not have to submit an environmental certification and request for the release of funds, and no further approval from HUD or the state is needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under § 58.34. The conversion to exempt status does not remove the need to comply with the other requirements at § 58.6 ''as applicable.''

Comment: The final rule should clarify the phrase ''except in extraordinary circumstances'' as used in proposed § 58.22(b).

HUD Response: The final rule makes no change to the proposed rule on this matter. The phrase ''except in extraordinary circumstances'' is taken from CEQ regulations (40 CFR 1508.4) and is already defined at § 58.2(a)(3) of the current regulations. The term means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are: (1) Actions that are unique or without precedent; (2) actions that are substantially similar to those that normally require an EIS; (3) actions that are likely to alter existing HUD policy or HUD mandates; or (4) actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

Comment: Regarding § 582.230(b), the restrictions on a recipient and others limiting proposed acquisition for a project under Shelter Plus Care until HUD approves the recipient's environmental certification of compliance and request for the release of funds would totally restrict a housing authority's ability to move forward with a project. The commenter asserted that this will defeat HUD's stated desires to achieve a speedy start-up in Shelter Plus Care projects, will discourage the housing authority's partners from participating in such endeavors, and is an unwarranted incursion into their rights to perform standard business activities.

HUD Response: The final rule makes no change to the proposed rule in response to this comment. It appears that the commenter incorrectly construed the provision. The added language makes conforming amendments to the Shelter Plus Care program regulations, which do not currently adequately reflect the applicability of part 58 procedures (see § 58.1(b)(3)). Also, the Shelter Plus Care program is designed to link rental assistance to supportive services for hard-to-serve homeless persons with disabilities. The current regulation excludes tenant-based rental assistance from any environmental review. Other eligible activities may be subject to reviews. Moreover, the restriction on the recipient, project ''partners'' and their contractors' undertaking or committing funds for acquisition and development actions does not apply to undertakings or commitments of non-federal funds for a development by a party before the party applies to the Shelter Plus Care recipient for federal funds for the project. Where a third party has begun a project in good faith as a private project, the recipient is not precluded from considering a later application for federal assistance for the project, but must advise the third party applicant to cease further choice-limiting actions on the project until the environmental review is completed.

IV. List of HUD Programs Covered by 24 CFR Part 58

For ready reference and convenience of the reader, the below list indicates the HUD programs that are covered by 24 CFR part 58 by program name, program regulation, program office, and OMB number found in the Catalog of Federal Domestic Assistance. This list is not exhaustive as other programs may be added in the future. The final rule at § 58.1(b) includes the references to the statutory authorization of assumption of HUD environmental responsibilities by state, local, and tribal governments.

OMB number	Name of program	Regulation citation	Program office
14.188	Housing Finance Agencies Risk Sharing Project.	24 CFR part 266	Housing [1]
14.218	Community Development Block Grants/Entitlement Grants.	24 CFR part 570	CPD [2]
14.219	Community Development Block Grants/Small Cities Program.	24 CFR part 570	CPD
14.225	Community Development Block Grants/Special Purpose Grants/Insular Areas.	24 CFR part 570	CPD
14.228	Community Development Block Grants/State Program.	24 CFR part 570	CPD
14.231	Emergency Shelter Grants Program	24 CFR part 576	CPD
14.235	Supportive Housing Program	24 CFR part 583	CPD
14.238	Shelter Plus Care	24 CFR part 582	CPD
14.239	HOME Investment Partnerships Program	24 CFR part 92	CPD
14.241	Housing Opportunities for Persons with AIDS.	24 CFR part 574	CPD
14.246	Economic Development Initiative Grants	CFR: N.A. [NOFA [3] references 24 CFR part 570].	CPD
14.246	Brownfield Economic Development Initiative Grants.	CFR: N.A. [NOFA references 24 CFR part 570].	CPD
14.246	Economic Development Initiative—Special Projects (Congressionally earmarked).		COD
14.247	Self-Help Homeownership Opportunity Program.	NOFA	CPD

OMB number	Name of program	Regulation citation	Program office
14.248	Community Development Block Grants/ Section 108 Loan Guarantees.	24 CFR part 570	CPD
14.249	Section 8 Moderate Rehabilitation Single Room Occupancy.	24 CFR part 582	CPD
14.850	Public Housing Operating Fund Program	24 CFR part 990	PIH
14.862	Indian Community Development Block Grant Program.	24 CFR part 1003	PIH [4]
14.865	Loan Guarantees for Indian Housing	24 CFR part 1005	PIH
14.866	Demolition and Revitalization of Severely Distressed Public Housing.	NOFA, 24 CFR part 970	PIH
14.867	Indian Housing Block Grants	24 CFR part 1000	PIH
14.869	Title VI Federal Guarantee for Financing Tribal Housing Activities.	24 CFR part 1000	PIH
14.871	Section 8 Project-Based Voucher Program.	24 CFR part 983	PIH
14.872	Public Housing Capital Fund	24 CFR part 905	PIH
14.873	Native Hawaiian Housing Block Grants	24 CFR part 1006	PIH
14.900	Lead-Based Paint Hazard Control in Privately-Owned Housing.	NOFA	OHHLHC [5]

[1] Office of Housing—Federal Housing Commissioner.
[2] Office of Community Planning and Development.
[3] Notice of Funding Availability.
[4] Office of Public and Indian Housing.
[5] Office of Healthy Homes and Lead Hazard Control.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of Regulations, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of Regulations, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 58

Community Development Block Grants, Environmental Impact Statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 582

Grant programs—housing and community development, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.165–18.900.

Also see section IV of the **SUPPLEMENTARY INFORMATION.**

■ Accordingly, for the reasons described in the preamble, the Department amends 24 CFR parts 50, 58, 574, 582, 583, and 970 as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

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

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

■ 2. Amend § 50.19 by revising paragraph (b)(15) to read as follows:

§ 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.

* * * * *

(b) * * *

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that result in the transfer of title.

* * * * *

■ 3. Amend § 50.20 by revising paragraphs (a)(2), (a)(3), and (a)(4), to read as follows:

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) * * *

(2) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size nor capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(3)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(3)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(2)(i) of this section).

(4) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

* * * * *

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

■ 4. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O 11991, 3 CFR 1977 Comp., p. 123.

■ 5. Amend § 58.1 by removing paragraph (b)(2) and designating it as ''reserved,'' redesignating and revising existing paragraph (b)(3) as paragraph (b)(3)(i), adding paragraph (b)(3)(ii), revising paragraphs (b)(6)(i), (ii), and (iii), deleting ''and'' at the end of paragraph (b)(8), replacing the period at the end of paragraph (b)(9) with a semicolon, and adding new paragraphs (b)(10), (11), (12), and new paragraphs (c) and (d), to read as follows:

§ 58.1 Purpose and applicability.

* * * * *

(b) * * *

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

* * *

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

* * *

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations

Act, 1999 (Pub. L. 105–276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

■ 6. Amend § 58.2 by revising paragraphs (a)(5)(v) and (a)(5)(vii), adding new paragraphs (a)(5)(ix) and (x), revising paragraphs (a)(6), (a)(7) introductory text, (a)(7)(i) and (a)(7)(ii) introductory text, and removing paragraphs (a)(7)(ii)(D) and (E), to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) * * *

(5) * * *

(v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;

* * *

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

* * *

(ix)(A) With respect to NAHASDA assistance under § 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under § 58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity.* Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in § 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in § 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

* * * * *

■ 7. Amend § 58.4 by revising paragraph (b)(2), removing paragraph (b)(3), and adding a new paragraph (c) to read as follows:

§ 58.4 Assumption authority.

* * * * *

(b) * * *

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

■ 8. Amend § 58.5 by revising paragraphs (a)(1) and (i) to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h–2).

* * * * *

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

* * * * *

■ 9. Revise § 58.10 to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

■ 10. Amend § 58.11 by revising paragraph (b) to read as follows:

§ 58.11 Legal capacity and performance.

* * * * *

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

* * * * *

§ 58.17 [Removed]

■ 11. Remove and reserve § 58.17.

■ 12. Revise § 58.18 to read as follows:

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

■ 13. Revise § 58.22 to read as follows:

§ 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP).* In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

■ 14. Amend § 58.33 by revising paragraph (b) to read as follows:

§ 58.33 Emergencies.

* * * * *

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

■ 15. Amend § 58.35 as follows:

a. Redesignating paragraphs (a)(3)(i) and (a)(3)(ii) as paragraphs (a)(3)(ii) and (a)(3)(iii);

b. Adding a new paragraph (a)(3)(i);

c. Revising paragraphs (a)(4) and (a)(5); and

d. Adding a new paragraph (b)(7).

The additions and revisions read as follows:

§ 58.35 Categorical exclusions.

(a) * * *

(3) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

(ii) * * *

(iii) * * *

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

* * * * *

(b) * * *

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

* * * * *

■ 16. Revise § 58.45 to read as follows:

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI–RROF)	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published or, if no publication, 18 days when mailing and posting

■ 17. Amend § 58.72 by revising paragraph (b) to read as follows:

§ 58.72 HUD or State actions on RROFs and certifications.

* * * * *

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

* * * * *

■ 18. Amend § 58.75 by revising paragraph (e) to read as follows:

§ 58.75 Permissible bases for objections.

* * * * *

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 19. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 20. Revise § 574.510 to read as follows:

§ 574.510 Environmental procedures and standards.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title for any competitive grant for Fiscal Year 2000.

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved (or HUD has performed an environmental review and the recipient has received HUD approval of the property). HUD will not release grant funds if the recipient or any other party commits grant funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

(c) For activities under a grant to a nonprofit entity that would generally be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient nonprofit entity objects in writing to the responsible entity's performing the review under part 58. Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property.

PART 582—SHELTER PLUS CARE

■ 21. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

■ 22. Revise § 582.230 to read as follows:

§ 582.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title prior to its approval of any conditionally selected applications from PHAs for Fiscal Year 2000 and prior years for other than the SRO component. For activities under a grant to a PHA that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient PHA objects in writing to the responsible entity's performing the review under part 58. Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with

part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

PART 583—SUPPORTIVE HOUSING

■ 23. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

■ 24. Revise § 583.230 to read as follows:

§ 583.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title prior to its approval of any conditionally selected applications for Fiscal Year 2000 and prior years that were received directly from private nonprofit entities and governmental entities with special or limited purpose powers. For activities under a grant that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient objects in writing to the responsible entity's performing the review under part 58. Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

■ 25. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

■ 26. Amend § 970.4 by revising paragraph (b), removing paragraph (c) and designating it as reserved, to read as follows:

§ 970.4 General requirements for HUD approval of applications for demolition or disposition.

* * * * *

(b) *Environmental review.* Activities under this part are subject to HUD environmental regulations in part 58 of this title. However, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if a PHA objects in writing to the responsible entity's performing the review under part 58.

(c) [Reserved]

* * * * *

Dated: September 15, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–24265 Filed 9–26–03; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Monday,
September 29, 2003

Part VI

Department of Education

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities; Notice

DEPARTMENT OF EDUCATION

RIN 1820–ZA29

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces priorities under the Special Demonstration Programs. The Assistant Secretary may use these priorities in fiscal year (FY) 2003 and in later years.

We take this action to focus attention on the adult literacy needs of individuals with disabilities pursuing employment under the State Vocational Rehabilitation Services Program. We intend that projects funded under these priorities will demonstrate that certain specific literacy services may raise the literacy levels and earnings of individuals with disabilities compared to individuals who receive the usual vocational rehabilitation (VR) services. These priorities are effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Susan-Marie Marsh, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316 Switzer Building, Washington, DC 20202–2641. Telephone: (202) 358–2796 or via Internet: *Susan-Marie.Marsh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Data from the *Longitudinal Study of the Vocational Rehabilitation Services Program* suggest reading achievement levels are highly positively correlated with earnings. However, VR agencies provide basic literacy services to only one percent of the VR population. As a result of these findings, the Assistant Secretary is interested in testing the impact of two instructional reading curricula (the Lindamood-Bell Language Program (LBLP) and the Wilson Reading System(r) (WRS)) on the literacy of adults with disabilities against the traditional services provided by VR.

We published a notice of proposed priorities for this program in the **Federal Register** on July 25, 2003 (68 FR 44186). The notice of proposed priorities included a discussion of the significant issues and analysis used in the determination of these priorities.

Except for minor editorial and technical revisions, there are no differences between the notice of proposed priorities and this notice of final priorities.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priorities, three parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities follows.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comments: One commenter recommended that it would be better to compare a ''phonics-based'' approach with a ''whole-word'' approach using an ''eclectic'' approach to see which approach would provide the most gains in literacy skills and, thus, employment.

Discussion: While the idea of a comparison study in approaches is interesting, we are trying to rigorously test two research-based approaches to enhancing the literacy of adults with disabilities who are VR consumers. The interventions chosen fit those parameters. Current research suggests that we can teach to the consumers' ''weaknesses'' effectively using these methods, and we are testing this specific population to identify those weaknesses and strengthen them. The problem with the ''eclectic'' approach or a method composed of elements drawn from various sources is that the treatment would vary, and this would jeopardize the research design and make it difficult to draw specific conclusions concerning the effectiveness of the treatment used.

Change: None.

Comments: Two commenters indicated that the interventions will enable adults with disabilities to participate in literacy curricula that may ultimately be necessary for successful employment and that persons with barriers to employment resulting from low reading ability will benefit greatly from the opportunity to increase skills in basic reading, writing, and language. Additionally, they noted that it is important that literacy programs such as the LBLP or the WRS be assessed to determine their effectiveness with persons with disabilities in VR settings.

Discussion: We agree with these comments.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Model Demonstrations To Improve the Literacy Skills and Employment Outcomes of Individuals With Disabilities

This priority supports projects that demonstrate the effect literacy services and instruction have on improving literacy skills of targeted groups of VR consumers and the effect on their employment and earnings outcomes. Projects must demonstrate how VR offices can effectively integrate literacy services into their service delivery systems and can best provide literacy services and instruction to a targeted group of VR consumers.

Evaluation

Projects must assure cooperation with the Rehabilitation Services Administration (RSA) and RSA's outside evaluator in meeting the evaluation needs of the project and RSA. Project cooperation with RSA's outside evaluator must include the following:

1. The assessment of all entering VR consumers in the designated project service area using brief methodologically acceptable screening instruments for learning disabilities and literacy levels to determine their eligibility for the project. The

assessment does not include VR consumers with evidence of mental retardation in their case files.

2. The assignment of approximately one-half of the eligible project participants into a literacy intervention group who would receive the additional services and benefits of the project and approximately one-half of the project participants into a control group who would not receive project services. However, no individual in the control group can be denied literacy services if his or her Individualized Plan for Employment (IPE) requires those services. Furthermore, those services may not be provided or paid for under these demonstration grants.

3. The use of diagnostic tests and effective assessments of reading proficiency consistent with the procedures of RSA's outside evaluator.

4. The administration of a pre- and post-test to project participants as directed by RSA's outside evaluator.

Interventions

An applicant for this competition must choose either the LBLP or the WRS for its curriculum and provide a rationale for its choice (*e.g.*, the local adult literacy provider already uses WRS). However, an applicant may also choose to describe its capacity to use the other curriculum if it would be willing to substitute the alternative curriculum as its curriculum in order to enhance its ability to compete. RSA will select grantees in a manner to ensure that each curriculum intervention is adequately represented in the applications selected for funding.

Project Participants

The following participant research criteria must be met:

1. Projects must have a sufficient number of individuals in the control and experimental groups so that the effects of the literacy intervention can be adequately measured.

2. Project participants must be eligible to receive VR services by the State VR agency and have, or be in the process of developing, an IPE.

3. All project participants (control and experimental groups) must be given an informed choice with respect to participation in the demonstration project consistent with the human subjects provisions as included in the application package.

4. Project participants for the experimental and control groups must be selected using the requisite instrument. RSA requires use of the *Learning Needs Screening Tool*, a validated and public domain screener, which can be incorporated into the VR intake process. Copies of the screener as well as further information may be found on the Internet at the following Web site: *http://www.seakingwdc.org/ld/WaScreenTool.htm*.

Use of Funds

Funds may be used only for project costs and related activities and may not be used to supplant the cost of services ordinarily provided by the VR program. Related activities may include, but are not limited to— (1) counselor training or orientation, including counselor training on administration of literacy assessment instruments, (2) educational assessment and evaluation, (3) research expenses, (4) support services such as consumer transportation, childcare, and facilitation for attendance and retention, (5) instructional materials, (6) curriculum and instruction, (7) professional development for instructors and administrators, (8) assistive technology devices and services, (9) instructional technology, and (10) consultants.

Invitational Priority

Within the priority for this competition, we are particularly interested in applications that meet the following invitational priority:

Establishing partnerships with other organizations that can assist in carrying out their respective projects related to improving literacy and employability skills of adults with disabilities.

These organizations might include Adult Education and Family Literacy (AEFL) programs, institutions of higher education, volunteer-based literacy programs, community rehabilitation programs, nonprofit or for-profit vendors of literacy services, and other workforce agencies. Applicants under this invitational priority must meet the requirements in 34 CFR 75.127 through 75.129, which governs how partnerships and other groups of eligible parties may submit applications and conduct funded projects.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a proposed rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). In order to make timely grant awards, the Secretary has determined that a delayed effective date is impracticable.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Applicable Program Regulations:* 34 CFR part 373.

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(Catalog of Federal Domestic Assistance Number 84.235P Special Demonstration Programs—Model Demonstration Projects to Improve the Literacy and Employment Outcomes of Individuals With Disabilities)

Program Authority: 29 U.S.C. 773(b).

Dated: September 24, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–24530 Filed 9–26–03; 8:45 am]

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19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9] Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9] Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9] Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
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20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
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48 Chapters:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.