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

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Termination of the Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The decision to terminate this waiver of the Nonmanufacturer Rule is based on evidence provided to the SBA that there are small businesses which manufacturer items within this class of product. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the product of domestic small business manufacturers or processors where this class of product is required. A notice to terminate a waiver of the Nonmanufacturer Rule appeared in the **Federal Register** on October 29, 2003 (68 FR 61636). Comments from this notice were received from small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to terminate the waiver of the Nonmanufacturer for Ammunition (except small arms) Manufacturing, NAICS 332993, in accordance with 13 CFR 121.1204 (a)(7).

EFFECTIVE DATE: January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION: Public Law 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 121.906(b) and 121.1106(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 a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–1603 Filed 1–27–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–330–AD; Amendment 39–13437; AD 2004–02–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that requires relocating the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment, and accomplishing follow-on actions. This action is necessary to prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew. This action is intended to address the identified unsafe condition.

DATES: Effective March 3, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes was published in the **Federal Register** on November 14, 2003 (68 FR 64572). That action proposed to require relocating the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment, and accomplishing follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

The FAA has carefully reviewed the available data and determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 374 airplanes of U.S. registry will be affected by this

AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately between $301 and $304 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $161,194 and $162,316, or between $431 and $434 per airplane.

The cost impact figure discussed above is 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 adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–13437. Docket 2002–NM–330–AD.

Applicability: Model EMB–135 and –145 series airplanes; as listed in EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; and EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from damaging the pitot drain valves, which could cause airspeed indication errors, resulting in display of erroneous or misleading information to the flight crew, accomplish the following:

Relocation

(a) Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first: Relocate the pitot 1 and pitot 2 drain valves from the nose landing gear compartment to the forward electronic compartment; and install a plug, washers, and a nut to close the hole in the structure where the pitot 1 and pitot 2 drain valves were removed; per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Installation

(b) After accomplishment of paragraph (a) of this AD but prior to further flight: Install a new placard and apply sealant on the placard per the Accomplishment Instructions of EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable.

Actions Accomplished Per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–34–0070, original issue, dated April 23, 2002; EMBRAER Service Bulletin 145–34–0070, Change 01, dated September 23, 2002; and EMBRAER Service Bulletin 145–34–0070, Change 02, dated December 2, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–34–0070, Change 03, dated July 16, 2003; or EMBRAER Service Bulletin 145LEG–34–0002, dated September 23, 2002; as applicable. EMBRAER Service Bulletin 145–34–0070, Change 03, contains the following effective pages:

Page No.	Change level shown on page	Date shown on page
1, 2, 5, 6	03	7–16–2003
3, 4, 7–15	01	9–23–2002

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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 1: The subject of this AD is addressed in Brazilian airworthiness directive 2002–06–01R1, dated November 8, 2002.

Effective Date

(f) This amendment becomes effective on March 3, 2004.

Issued in Renton, Washington, on January 14, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1561 Filed 1–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9106]

RIN 1545–AW99

Awards of Attorney's Fees and Other Cost Based Upon Qualified Offers; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations and removal of temporary regulations.

SUMMARY: This document corrects final regulations and the removal of temporary regulations (TD 9106) that were published in the **Federal Register** on December 29, 2003 (68 FR 74848). The document contains final regulations and the removal of temporary

regulations relating to the qualified offer rule, including the requirements that an offer must satisfy to be treated as a qualified offer under section 7430(g) and the requirements that a taxpayer must satisfy to qualify as a prevailing party by reason of having made a qualified offer.

DATES: This document is effective on December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Tami C. Belouin, (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations and removal of temporary regulations (TD 9106) that is the subject of this correction are under section 7430(g) of the Internal Revenue Code.

Need for Correction

As published, the final regulations and removal of temporary regulations(TD 9106) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations and removal of temporary regulations (TD 9106) that were the subject of FR. Doc. 03–31822, is corrected as follows:

§ 301.7430–7 [Corrected]

■ 1.On page 74855, column 1, § 301.7430–7(g), line 1, the language ''(g) Effective date. This section is'' is corrected to read ''(f) Effective date. This section is''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–1814 Filed 1–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Rules of Practice in Patent Cases

CFR Correction

■ In Title 37 of the Code of Federal Regulations, revised as of July 1, 2003, on page 107, the second § 1.198 is removed.

[FR Doc. 04–55500 Filed 1–27–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Part 52 (§ 52.1019 to End), revised as of July 1, 2003, on page 179, § 52.1320 is corrected by adding after the first entry to the table in paragraph (c) under Chapter 6, the following entry.

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

Missouri Citation	Title	State effective date	EPA approval date	Explanation
Chapter 6–Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.020	Definitions and Common Reference Tables.	5/30/00	3/23/01, 66 FR 16139.	
*	*	*	*	*

[FR Doc. 04–55501 Filed 1–27–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7615–3]

RIN 2060–AM01

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2004. Essential use allowances enable a person to obtain controlled class I ODSs as an exemption to the regulatory ban of production and import of these chemicals, which became effective on January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The allocations total 2077.91 metric tons of chlorofluorocarbons for use in metered dose inhalers. EPA is also allocating the remaining allowances for methyl chloroform (141.877 metric tons) to the U.S. Space Shuttle Program.

DATES: This final rule is effective January 28, 2004.

ADDRESSES: Materials related to this rulemaking are contained in EPA Air Docket OAR–2003–0202. The EPA Air Docket is located at EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC 20460. The Air Docket is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. Materials related to previous EPA actions on the essential use program are contained in EPA Air Docket No. A–93–39.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Essential Use Program Manager, by regular mail: U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by courier service or overnight express: 1301 L Street NW., Washington DC, 20005, by telephone: (202) 343–9712; or by e-mail: *monroe.scott@epa.gov.*

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I. General Information

A. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action at Air Docket ID No. OAR–2003–0202. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Hard copies of documents related to previous essential use allocation rulemakings and other actions may be found in EPA Air Docket ID No. A–93–39. The public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is available for viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742. EPA may charge a reasonable fee for copying docket materials.

2. Electronic Access

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

II. Basis for Allocating Essential Use Allowances

A. What Are Essential Use Allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting chemicals in the U.S. for purposes that have been deemed ''essential'' by the Parties to the Montreal Protocol and the U.S. Government.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption of class I ODSs is accomplished through adherence to phase-out schedules for specific class I ODSs [2], including: Chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol and the Clean Air Act (Act) provide exemptions that allow for the continued import and/or production of class I ODS for specific uses. Under the Protocol, exemptions may be granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

''(a) That a use of a controlled substance should qualify as ''essential'' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

B. Under What Authority Does EPA Allocate Essential Use Allowances?

Title VI of the Act implements the Protocol for the United States. [3] Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phase out date for the following essential uses:

(1) Methyl Chloroform, ''solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available.'' EPA issues methyl chloroform allowances to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical Devices (as defined in section 601(8) of the Act), ''if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices.'' EPA issues allowances to manufacturers of metered-dose inhalers, which use CFCs as propellant for the treatment of

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phase out may be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are listed at 40 CFR part 82 subpart A, appendix A.

[3] According to Section 614(b) of the Act, Title VI ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol * * * and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.'' EPA's regulations implementing the essential use provisions of the Act and the Protocol are located in 40 CFR part 82.

asthma and chronic obstructive pulmonary diseases.

(3) Aviation Safety, for which limited quantities of halon-1211, halon-1301, and halon 2402 may be produced ''if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.'' Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because alternatives are available or because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Protocol, under Decision X/19, additionally allows a general exemption for laboratory and analytical uses through December 31, 2005. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an allowance for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: Testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

C. What Is the Process for Allocating Essential Use Allowances?

Before EPA may allocate essential use allowances, the Parties to the Protocol must first approve the United States' request to produce or import essential class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through today's action were first nominated by the United States in January 2001.

Once the U.S. nomination is approved by the Parties, EPA allocates essential use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For medical devices, EPA requests information from manufacturers about the number and type of devices they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for metered-dose inhalers in the coming calendar year. Based on FDA's assessment, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA may not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2004, the Parties authorized the United States to allocate up to 2,975 metric tons of CFCs for essential uses.

For methyl chloroform, Decision X/6 by the Parties to the Protocol established that ''* * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties [will] be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential uses.'' Section 604(d)(1) of the Act terminates the exemption period for methyl chloroform on January 1, 2005. Therefore, between 1999 and 2004 EPA may allow production or import up to a total of 176.4 metric tonnes of methyl chloroform for authorized essential uses.

III. Response to Comments

EPA received one comment on the proposed rule of October 28, 2003. The comment opposed exempting Class I substances for any purpose, including asthma medication and the Space Shuttle program, because alternatives have been developed. EPA disagrees with this comment. Section 604 of the Clean Air Act, as amended, permits production of methyl chloroform for essential applications where safe and effective alternatives are not available, as well as for medical devices determined to be essential by FDA.

NASA has identified and is using alternative solvents in the Space Shuttle program in all but a few remaining applications, for which no satisfactory alternative to methyl chloroform has yet been found. The remaining applications for which there is no alternative are case insulation components cleaning, activation of rubber layers in case insulation, flex bearing cleaning, and field joint cleaning.

Regarding medical devices, FDA has found the use of ozone depleting substances to be essential in metered dose inhalers for the treatment of asthma and chronic obstructive pulmonary disease (*see* 21 CFR 2.125(e)). Consequently, there are still a number of medical devices eligible for essential use CFCs in 2004. As established by final rule on July 24, 2002 (67 FR 48370), FDA will determine through rulemaking when a medical device is no longer essential due to the availability of safe and effective alternatives.

IV. Exemption for Methyl Chloroform for Use in the Space Shuttle and Titan Rockets

As discussed in Section II.C above, before the start of calendar year 2005 EPA may allocate up to 176.4 tons of methyl chloroform for authorized essential uses. According to reporting submitted to the EPA tracking system for ozone-depleting substances, the total amount of methyl chloroform produced or imported by essential use allowance holders (the U.S. Air Force (USAF) for Titan Rockets, and the National Aeronautics and Space Administration (NASA) for the Space Shuttle) from 1999 through the second quarter of 2003 was 34.523 metric tons. USAF and NASA have notified EPA that they do not intend to use their 2003 allowances to obtain methyl chloroform during the last two quarters of 2003. In addition, USAF has notified EPA that they have no need for 2004 allowances. Therefore, EPA finds that 141.877 tons of methyl chloroform allowances are available for 2004 and allocates that quantity to NASA.

V. Allocation of Essential Use Allowances for Calendar Year 2004

With today's action, EPA is allocating essential use allowances for calendar year 2004 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2004

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	390.60
Aventis Pharmaceutical Products	CFC–11 or CFC–12 or CFC–114	48.40
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	500.20
PLIVA Inc.	CFC–11 or CFC–12 or CFC–114	136.00
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	918.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	84.71
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	141.877

VI. Correction to 40 CFR Part 82, Sections 3 and 4(k)

On January 2, 2003, EPA published a final rule (68 FR 237) regarding quarantine and preshipment applications of methyl bromide, which is an ozone-depleting substance. This final rule removed paragraphs (n) through (s) of 40 CFR 82.4 and redesignated paragraphs (t) through (w) as (n) through (q). However, the final rule did not also change the definition of ''essential-use allowances'' in § 82.3 to be consistent with the reordering of paragraphs in § 82.4. The definition of essential use allowances in § 82.3 reads, ''Essential-Use Allowances means the privileges granted by § 82.4(t) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.'' Therefore, for consistency with the reordered regulations, we are correcting the definition of essential use allowances to refer to § 82.4(n).

In addition, the final rule revised section 4(k) of 40 CFR Part 82 to include paragraph 4(k)(1), which states that ''* * * only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, and used controlled substances.'' In undertaking this revision, EPA inadvertently deleted a phrase that had appeared in the prior version of this statement. EPA proposed to restore the deleted phrase by correcting the statement in question to read, ''* * * only essential use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, used controlled substances, and essential use CFCs.'' This correction clarifies that the import restriction does not apply to CFCs produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority of another country for use in essential metered dose inhalers. *See* 67 FR 6351 (February 11, 2002). We did not receive comments on this matter. Therefore, we are adopting the corrected statement.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) 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.

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.

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* OMB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) Pharmaceutical

preparations manufacturing businesses (NAICS code 325412) that have 750 employees or fewer; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase out of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

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

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 E.O. 12866, and (2) concerns an environmental health and 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. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

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(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary

consensus standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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. Therefore, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 28, 2004.

VIII. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Environmental protection, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: January 21, 2004.

Michael O. Leavitt,

Administrator.

■ 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.3 is amended by revising the definition of Essential Use Allowances to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Essential-Use Allowances means the privileges granted by § 82.4(n) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

* * * * *

■ 3. Section 82.4 is amended by revising paragraph (k)(1) and the table in paragraph (n)(2) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, used controlled substances, and essential use CFCs.

* * * * *

(n) * * *

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2004

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	390.60
Aventis Pharmaceutical Products	CFC–11 or CFC–12 or CFC–114	48.40
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	500.20
PLIVA Inc.	CFC–11 or CFC–12 or CFC–114	136.00
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	918.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	84.71
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets		
National Aeronautics and Space Administration (NASA)/ Thiokol Rocket.	Methyl Chloroform	141.877

[FR Doc. 04–1812 Filed 1–27–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0356; FRL–7341–1]

Copper (II) Hydroxide; 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 copper (II) hydroxide on raw agricultural commodities when used as an inert ingredient (for pH control) in pesticide products. Syngenta Crop Protection 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 copper (II) hydroxide.

DATES: This regulation is effective January 28, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0356, must be received on or before March 29, 2004.

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: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@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–2003–0356. 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 July 2, 2003 (68 FR 39554) (FRL–7315–2), 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 tolerance petition (PP 2E6471) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, North Carolina 27419–8300. The notice included a summary of the petition prepared by the petitioner Syngenta Crop Protection. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1021 be amended by establishing an exemption from the requirement of a tolerance for residues of copper (II) hydroxide (CAS Reg. No. 20427–59–2).

Section 408(b)(2)(A)(i) of 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(b)(2)(A)(ii) 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) 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. 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.

III. Human Health Assessment

Consistent with section 408(b)(2)(D) of 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. The nature of the toxic effects caused by copper (II) hydroxide are discussed in this unit. However, for copper (II) hydroxide, toxicity has not been assessed based on the results of animal toxicity data. As discussed below the toxicity is characterized by a discussion of the use of an hydroxide as a neutralizing agent, the natural occurrence of copper, and the highly reactive nature of any hydroxide.

In formulating a pesticide product, a basic chemical such as copper (II) hydroxide serves a specific purpose, that of a neutralizing agent or a pH adjuster. During the manufacture of a pesticide product (or, in fact, many industrial chemicals), it may be necessary to adjust the pH of the product. A base functions as a neutralizing agent when the hydroxyl ion combines with the H^+ in an acidic solution to form a molecule of water. Small amounts of the hydroxide would be added to the solution until a neutral pH is reached. After the pH adjustment is performed and the neutralization reaction occurs, copper (II) hydroxide is no longer present. The reaction products that are then present are the copper (II) positively charged ion and water.

Alternatively, it might be necessary to have a pesticide product maintain a basic pH; thus, the copper hydroxide would be added during the manufacturing process to deliberately raise the pH, which would mean an excess of the hydroxyl ion. Such products are not likely to be sold to the residential market.

On November 15, 2000, the Agency published in the **Federal Register** (65 FR 68908) (FRL–6747–3) a final rule establishing a tolerance exemption for copper sulfate pentahydrate. That final rule discussed the Agency's evaluation of the toxicity of copper which is also applicable to copper (II) hydroxide. As stated in that final rule, copper is a naturally-occurring material, i.e. ubiquitous in nature, is a necessary nutritional element, and is found naturally in the food we consume for nutrition. Oral ingestion of excessive amounts of the copper ion from pesticidal use is very unlikely. In fact, if large amounts of copper are ingested prompt emesis will occur. This is the body's protective reflex.

As a chemical class, hydroxides are significantly different from many of the chemicals regulated as inert ingredients in pesticide products. First, hydroxides are highly corrosive. Due to this property, toxicity testing can only be performed on very diluted solutions. Therefore, toxicity studies performed with undiluted copper (II) hydroxide are not available. Second, hydroxides are highly reactive, and therefore are not expected to be persistent in the food supply, the environment, or in water resources. Copper (II) hydroxide would be expected to dissociate and immediately react with both plant and animal materials.

Chemically, an hydroxide is known as a base, a substance that when dissolved in water yields hydroxyl (OH^{-1}) ions. The increase of the concentration of the OH^{-1} ion raises the pH. It is the hydroxyl ion that is highly reactive, thus displaying the corrosive characteristic. The consequences of acute exposure to hydroxides are well understood: They are corrosive to the eyes, the skin, and the respiratory tract. The hazard of any hydroxide chemical derives directly from and is due to these irritation and caustic effects.

Copper (II) hydroxide is not considered to be a strong base. The strongest bases (the most reactive) are those of the alkali metal and alkali earth groups, such as sodium, potassium, calcium, and magnesium. Even the strongest base hydroxides, however, have been approved by the Food and Drug Administration (FDA) for many uses including direct use in the food supply. In fact FDA has evaluated the following hydroxides and determined that the following substances are GRAS (generally recognized as safe) when used as direct food additives.

Chemical	FDA GRAS Citation	GRAS Use Pattern
Ammonium hydroxide	21 CFR 184.1139	Leavening agent, pH control agent, surface-finishing agent, boiler water additive
Calcium hydroxide	21 CFR 184.1205	(No limitations specified)
Magnesium hydroxide	21 CFR 184.1428	Nutrient supplement, pH control agent, processing aid
Potassium hydroxide	21 CFR 184.1631	Formulation aid, pH control agent, processing aid, stabilizer and thickener
Sodium hydroxide	21 CFR 184.1763	pH control agent, processing aid

There is no available information on any hydroxide chemical indicative of a human health hazard from the ingestion of food directly treated with these hydroxides resulting from the FDA GRAS uses. According to FDA, no data were found ''. . . suggesting that the use of sodium or potassium hydroxides, as currently practiced in food processing, is hazardous to consumers. The corrosive effect of ingestion of large amounts of strong alkalis such as sodium and potassium hydroxides has been amply demonstrated. However, these alkalis are not present as such in foods as consumed. The small amounts added for pH adjustment during food processing react rapidly with food acids to form neutral salts. Moreover, any free alkali that might be present in food . . . is converted to neutral salts in the stomach.''

Given the structural similarities of copper (II) hydroxide and the stronger bases evaluated in the FDA GRAS evaluation, there is no expectation that copper (II) hydroxide would react in a different manner. Thus, the likelihood of any unreacted copper (II) hydroxide being available in the food supply is extremely unlikely.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 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*. Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including

humans) and plants. It is 1 of 26 elements found essential to life. The human body must have copper to stay healthy. In fact, for a variety of biochemical processes in the body to operate normally, copper must be part of our diet. Copper is needed for certain critical enzymes to function in the body. Too little copper in the body can actually lead to disease.

The main source of copper for infants, children, and adults, regardless of age, is the diet. Copper is typically present in mineral rich foods like vegetables (potato, legumes (beans and peas)), nuts (peanuts and pecans), grains (wheat and rye), fruits (peach and raisins), and chocolate in levels ranging from 0.3 to 3.9 parts per million (ppm). A single day's diet may contain 10 milligrams (mg) or more of copper. The daily recommended allowance of copper for adults' nutritional needs ranges from 2 to 3 mg/day.

Given the widespread occurrence of copper and hydroxides in the existing food supply, the amount of copper (II) hydroxide that can be applied to food as a result of a use in a pesticide product would not be expected to significantly increase the existing amounts of either copper or hydroxide in the food supply. The EPA-regulated uses as an inert ingredient in a pesticide product would be considerably less than all of the FDA GRAS uses of hydroxides. More importantly, generally all of hydroxide used as an inert ingredient would either be neutralized in the pesticide solution or in the environment prior to any human exposure.

2. *Drinking water exposure*. Copper is a natural element found in the earth's crust. As a result, most of the world's surface water and ground water that is used for drinking purposes contains copper. Naturally occurring copper in drinking water is safe for human consumption, even in rare instances where it is at levels high enough to impart a metallic taste to the water. The Agency has set a maximum contaminant level (MCL) for copper in drinking water at 1.3 ppm.

As previously stated, hydroxides, including copper (II) hydroxide, are not expected to be persistent in the environment, or in water resources. Copper (II) hydroxide would be expected to dissociate, react with organic or inorganic materials, and complex with ionic substrates.

B. Other Non-Occupational Exposure

Copper is a naturally occurring element present in the earth's crust, and it is therefore naturally occurring in soil, water, and air. Soils would be considered copper deficient if they contain less than 1 to 2 ppm available copper in the context of plant health. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter.

As a group, hydroxides constitute a group of chemicals with many industrial uses. However, considering the reactivity and corrosivity of any hydroxide, there are few uses of even diluted solutions of hydroxides in and around the home.

V. Cumulative Effects

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 copper (II) hydroxide 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 copper (II) hydroxide and any other substances, and copper (II) hydroxide does not appear to produce toxic metabolites produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that copper (II) hydroxide 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*.

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

Copper is a naturally occurring element present in the earth's crust, and it is therefore naturally occurring in soil, water, and air. Copper is a component of the diet of all humans (including infants and children). Copper is an essential trace element for which the National Academy of Sciences has issued a recommended daily allowance (RDA) ranging from 2 to 3 mg/day for adults. The RDA reflects a level needed to avoid nutritional deficiencies, not an upper limit. The Agency believes that copper has no significant toxicity to humans. Given the ubiquitous nature of copper, there is reasonable certainty that no harm will result from the aggregate exposure of the U.S. population to copper.

Given the ubiquitous nature of copper, there is reasonable certainty that no harm will result from the aggregate exposure of infants and children to copper. A safety factor analysis has not been used to assess the risk. The additional tenfold safety factor for the protection of infants and children is unnecessary.

Hydroxide chemicals have been used in the food supply for a number of years. Use of various hydroxides as direct food additives has been reviewed by FDA and granted GRAS status. Given the structural similarities of copper (II) hydroxide and the stronger bases evaluated in the FDA GRAS evaluations, it is expected that copper (II) hydroxide would react in a similar manner. No significant exposure to copper (II) hydroxide is expected from use of copper hydroxide as an inert ingredient in pesticide products. It is extremely unlikely that use of copper (II) hydroxide in pesticide products will lead to any unreacted copper (II) hydroxide in the food supply.

VII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing copper (II) hydroxide (for endocrine effects) may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

Copper (II) hydroxide has been exempted from the requirement of a tolerance under 40 CFR 180.1021(b)

when applied (primarily) as a fungicide to growing crops.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for copper (II) hydroxide, and no CODEX maximum residue levels have been established for any food crops at this time.

VIII. Conclusions

Based on the information in this preamble, 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 copper (II) hydroxide. Accordingly, EPA finds that exempting copper (II) hydroxide (CAS Reg. No. 20427–59–2) from the requirement of a tolerance will be safe.

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) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. 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–2003–0356 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 March 29, 2004.

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–2003–0356, 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. 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. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) 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 FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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.

XI. 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: January 12, 2004.

Lois Rossi,

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 180.1021 is amended by adding paragraph (d) to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

* * * * *

(d) Copper (II) hydroxide (CAS Reg. No. 20427–59–2) is exempt from the requirement of a tolerance when applied to growing crops or to raw agricultural commodities as an inert ingredient (for pH control) in pesticide products.

[FR Doc. 04–1376 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0392; FRL–7340–9]

Formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) when used as an inert ingredient in a pesticide product. Nichino America 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 formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl).

DATES: This regulation is effective January 28, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0392, must be received on or before March 29, 2004.

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 XI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0371; e-mail address: *parker.james@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, pesticide manufacturer or antimicrobial 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–2003–0392. 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 October 22, 2003 (68 FR 60375) (FRL–7330–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 3E6753) by Nichino America, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl); CAS Reg. No. 157291–93–5.

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(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 an exemption from the requirement of 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. . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The

definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-α-hydroxypoly(oxy-1,2-ethanediyl), is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,803 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) meets all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl).

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) is 1,803 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) shares a common mechanism of toxicity with any other chemicals. However, formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) conforms to the criteria that identify a low risk polymer. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl).

VIII. Determination of Safety for Infants and Children

FFDCA 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 unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) is an endocrine disruptor.

B. Existing Exemptions from a Tolerance

There are no tolerances or tolerance exemptions for formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl).

C. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) nor have any CODEX maximum residue levels been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) from the requirement of a tolerance will be safe.

XI. 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–2003–0392 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 March 29, 2004.

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 XI.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–2003–0392, 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).

XII. 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.

XIII. 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 rule in the **Federal Register**. This 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: January 7, 2004.

Lois Rossi,

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. In § 180.960 the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
Formaldehyde, polymer with α-[bis(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), number average molecular weight (in amu), 1,803	157291–93–5
* * *	* *

[FR Doc. 04–1375 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0341; FRL–7338–4]

Lactic Acid, n-Butyl Ester, (S) and Lactic Acid, Ethyl Ester, (S); 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 lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S) when used as an inert ingredient in pesticide products. PURAC America Inc. 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.

DATES: This regulation is effective January 28, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0341, must be received on or before March 29, 2004.

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 VIII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@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–2003–0341. 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 July 11, 2003 (68 FR 41351) (FRL–7315–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of amendments to pesticide tolerance petitions (PP 5E4510 and 5E4515) by PURAC America Inc., 111 Barclay Boulevard, Lincolnshire, IL 60069. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.950 be amended by establishing two exemptions from the requirement of a tolerance for residues of lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S), CAS Reg. Nos. 34451–19–9 and 687–47–8, respectively. These are the stereochemical isomers of lactic acid, n-butyl ester and lactic acid, ethyl ester.

PURAC did not submit any new information as part of the amended petitions. PURAC is relying on the studies that were submitted in support of their 1995 petitions.

In response to the original pesticide petitions (5E4510 and 5E4515) submitted in 1995 by PURAC, EPA established tolerance exemptions for lactic acid, n-butyl ester and lactic acid, ethyl ester. For a discussion of the information submitted and the results of the Agency's review and evaluation, see the **Federal Register** of September 3, 2002 (67 FR 56225) (FRL–7196–6). In establishing these two tolerance exemptions, EPA identified the two chemical substances by nomenclature and CAS Reg. Nos. in what could be termed a general or non-specific manner. The general CAS Reg. Nos. are correct and do adequately identify the two lactic acid esters.

PURAC is now requesting that the Agency establish tolerance exemptions for the (S) isomers of lactic acid, ethyl ester (S) and lactic acid, n-butyl ester (S). On the PURAC website, the information for these two chemicals indicates that both chemicals are marketed under their general CAS Reg. No. and their (S) isomer CAS Reg. No. (see *http://www.purac.com/documents/products/EN-BL.pdf* and *http://www.purac.com/documents/products/EN-EL.pdf*. Given this information, the Agency does not intend to remove the tolerance exemptions for lactic acid, ethyl ester and lactic acid, n-butyl ester that were established on September 3, 2002, using the general CAS Reg. Nos.

Section 408(b)(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(b)(2)(A)(ii) 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) 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. 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.

III. Human Health Assessment

Consistent with section 408(b)(2)(D) of 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. The nature of the toxic effects caused by lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S) are discussed in this unit.

As mentioned above, lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S) are the stereochemical isomers of lactic acid, n-butyl ester and lactic acid, ethyl ester. In the simplest terms an isomer can be defined as a substance which has the same molecular formula as another, but the individual elements of the molecule--the links from one element to another within the molecule--are arranged differently. A stereochemical isomer differs in the 3-D spatial arrangement of the elements. In certain cases, this is sometimes referred to as ''mirror images.'' An example of such a mirror image arrangement is a person's right and left hand. A person holding his hands out, both palms up, cannot make the presentation of four fingers and the thumb of the right hand match the orientation of the left hand. They can be viewed as if there is a mirror between the two.

The chemical and physical properties of two isomeric chemicals are essentially the same. There can be some differences in the biological properties of the two isomers. However, the studies submitted by PURAC America Inc. in support of the original petition were performed using the isomeric form of the lactate esters--the (S) form--that is manufactured by PURAC. Therefore, the

data base that was offered in the original petition supports not only the use of the general nomenclature and the general CAS Reg. No., but also the (S) isomer nomenclature and the (S) isomer CAS Reg. No.

The Agency's conclusions on toxicity and aggregate exposure based on the available information as discussed in the Final Rule on September 3, 2002, remain the same and are applicable to both the general nomenclature and the (S) isomer nomenclature.

IV. Cumulative Effects

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 lactic acid, n-butyl ester, (S); lactic acid, n-butyl ester; lactic acid, ethyl ester, (S); and lactic acid, ethyl ester have 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 any lactic acid esters. These esters do not appear to produce toxic metabolites produced by other substances. As stated in the Final Rule of September 3, 2002, these are lower toxicity chemicals; therefore, the resultant risks separately and/or combined should also be low. For the purposes of this tolerance action, therefore, EPA has not assumed that the lactic acid esters have 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/*.

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

The Agency's determination of safety as discussed in the Final Rule on September 3, 2002, remains the same and is applicable to both the general nomenclature and the (S) isomer nomenclature.

VI. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing lactic acid, n-butyl ester (S) and lactic acid, ethyl ester (S) for endocrine effects may be required.

B. Analytical Method(s)

No analytical method is required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are two existing tolerance exemptions for lactic acid, n-butyl ester, and lactic acid, ethyl ester, using the general CAS Reg. No. in 40 CFR 180.950. The Agency is not removing these tolerance exemptions.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance or tolerance exemption for lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S).

VII. Conclusions

Based on the information in the record, summarized in this preamble, and the Final Rule published on September 3, 2002, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of lactic acid, n-butyl ester, (S) and lactic acid, ethyl ester, (S). Accordingly, EPA finds that exempting lactic acid, n-butyl ester, (S) (CAS Reg. No. 34451–19–9) and lactic acid, ethyl ester, (S) (CAS Reg. No. 687–47–8) from the requirement of a tolerance will be safe.

VIII. 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) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. 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–2003–0341 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 March 29, 2004.

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 VIII.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–2003–0341, 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. 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).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) 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 FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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.

X. 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: January 7, 2004.

Lois Rossi,

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. In section 180.950, the table in paragraph (e) is amended by adding alphabetically the following entries to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS No.
* * *	* *
Lactic acid, n-butyl ester, (S)	34451–19–9
Lactic acid, ethyl ester,(S)	687–47–8
* * *	* *

* * * * *

[FR Doc. 04–1447 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 7615–1]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

ACTION: Direct final notice of deletion of the Tyler Refrigeration Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Tyler Refrigeration Pit Superfund Site (Site), located in Smyrna (Kent County), Delaware, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective March 29, 2004 unless EPA receives adverse comments by February 27, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168.

INFORMATION REPOSITORIES: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Delaware at the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720, (302) 395–2600, Monday through Friday, 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final notice of deletion of the Tyler Refrigeration Pit Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 29, 2004 unless EPA receives adverse comments by February 27, 2004 on this notice or the parallel notice of intent to delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Tyler Refrigeration Pit Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, 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 Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

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

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA § 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Delaware on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Delaware concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Executive Summary of the Basis for Site Deletion

The Tyler Refrigeration Pit Superfund Site was the location of refrigeration manufacturing from the 1940s until 1976, with wastes disposed of in two unlined lagoons. These lagoons were excavated, the material removed, and the holes backfilled sometime between 1973 and 1975. From 1978 through 1995, Metal Masters Food Service Equipment Company (''Metal Masters'') manufactured restaurant supplies (such as metal cabinetry and countertops) at the Site. The Site was the focus of two Remedial Investigations (one performed by Clark Equipment Company (''Clark''), overseen by EPA, and one performed by Metal Masters, overseen by the State) and a Record of Decision (ROD). The conclusions of the investigations and subsequent ROD were that the former lagoons presented no substantial elevated level of contaminant or additional risk, but that the loading dock area of the Metal Masters facility appeared to be a source of a trichloroethane (TCA) plume discovered in ground water on-site. Furthermore, it was found that the ground water at the Site did not present any current elevated risk because there was no current exposure (due to a State-implemented Ground Water Management Zone (GMZ) that prohibits the installation of wells), but that there was the potential for future elevated risk. Therefore, a monitoring program was implemented to ensure that levels of contaminants on-site continue to diminish, and that no contaminants are leaving the Site or the area of the GMZ.

The No Action remedy was determined in the 2002 Five Year Review of the Site to be protective of human health and the environment. Since the ground water beneath and near the Site is not currently in use and is not migrating off-site, there is no current risk to human health or the environment. The GMZ implemented over the area of the Site by DNREC prevents the installation of wells, and therefore prevents any future exposure to ground water, thereby eliminating any future risk to human health or the environment. The monitoring program will continue to verify that no contaminants are migrating off-site. The only work remaining at the Site is to continue the monitoring program, which is to be taken over by Metal Masters pursuant to an Administrative Order on Consent that became effective June 4, 2002.

Site History and Characteristics

Land and Resource Use

The Tyler Refrigeration Pit Site (Site) is located on a 3–acre parcel of property at 655 Glenwood Avenue, Smyrna, Delaware. This property is currently owned by the State of Delaware and occupied by a tenant of Metal Masters, but was formerly owned by the Tyler Refrigeration Corporation and subsequently by Clark. The Site is approximately 1/2 mile southwest of the center of the town of Smyrna.

The Site includes an area which formerly contained two wastewater lagoons in the northeast portion of the property. Based on aerial photographs, the two lagoons were approximately 70 feet × 70 feet and 60 feet × 60 feet, and existed on the property from as early as 1954. The lagoons received wastewater from manufacturing operations at the property. Sometime between 1973 and 1975, Clark excavated and removed the contents of the lagoons. The lagoons were then backfilled and graded, and are currently maintained as parts of a lawn and an asphalt parking lot.

The land use in the area surrounding the Site is predominantly residential with some light industry and farming. Properties to the north of the Site across Glenwood Avenue include commercial properties, several residences and agricultural lands. To the west-northwest of the Site are several residences along Glenwood Avenue. To the south and southwest of the lagoons are the Metal Masters building and property and a grain elevator/silo structure. The area to the south-southeast of the Site is mainly residential.

History of Contamination

In the late 1940s, a plant was constructed on the property to

manufacture refrigerators by Wilson Refrigeration, Inc. Prior to this time the property was owned by the John E. Wilson, Jr. and Bertha M. Wilson and Wilson Cabinet Company. In 1951, Tyler Refrigeration Corporation (Tyler) leased the property from the Wilsons until 1956 when the title of the property was passed to Tyler. Based on existing aerial photographs, the two lagoons were constructed in the northeast portion of the property sometime prior to 1954. These lagoons were apparently constructed to receive wastewater from the refrigeration manufacturing operations at the Site, although little information is available as to their operation. The wastewater reportedly contained paints, paint-related waste, and solvents including trichloroethylene (TCE). In 1963, Tyler became part of the refrigeration division of Clark. Clark manufactured refrigeration equipment at the property until 1976. Wastewater discharges from the manufacturing operation were connected to a municipal sewage system in 1969. Sometime between 1973 and 1975, Clark excavated and removed the contents of the lagoons, and then backfilled the lagoons. In 1978, Metal Masters took possession of the property. At approximately the same time, pursuant to a financing arrangement in connection with this transaction, the Delaware Department of Community Affairs and Economic Development took title to the property.

In 1977, during routine monitoring, the Town of Smyrna's two municipal water supply wells were found to contain trichloroethene (TCE). Investigations by DNREC, the Delaware Division of Public Health and the Town of Smyrna identified a number of potential sources of TCE in the Smyrna area, including the Site. In 1982, Smyrna installed Granular Activated Carbon (GAC) units on its two municipal water supply wells. The GAC units effectively reduced TCE concentrations in the drinking water supplies to safe levels.

In 1982, EPA, performed a Preliminary Assessment/Site Inspection at the Site. Low levels of trichloroethane (TCA) and dichloroethane (DCA) were detected in one soil sample and toluene was detected in another soil sample. In December 1983, DNREC performed a Preliminary Site Assessment at the Site and concluded that TCE concentrations in the Smyrna wells appeared to be decreasing. Consequently, the GAC units were no longer necessary, and were later removed.

In June 1985, EPA reviewed the available information for the Site and concluded that it was one of several possible sources of the TCE found in the Smyrna municipal wells. On May 7, 1986, EPA collected a total of 10 ground water samples from domestic wells in the vicinity of the Site. The samples were analyzed for volatile organic compounds (VOCs). The only VOCs detected were low levels of chloroform in two of the samples.

On June 10, 1986, EPA formally proposed adding the Site to the National Priorities List (NPL). Significant comments were then submitted to EPA regarding the Hazard Ranking System (HRS) score (29.41) and opposing the inclusion of the Site onto the NPL. As a result, EPA commissioned DNREC to perform a follow-up inspection of the Site. Under this investigation, DNREC installed and sampled six (6) monitoring wells located across Glenwood Avenue from the Site. Based on the ground water sampling results, three substances of concern were identified in connection with the Site: l,l,l-TCA, l,l-dichloroethene (l,l-DCE) and chromium. Using the ground water sampling data collected by DNREC, EPA revised the HRS score for the Site in 1989, increasing the score to 33.94. The Site was formally added to the NPL on February 20, 1990.

In March 1991, EPA and Clark entered into an Administrative Order on Consent whereby Clark agreed to perform a Remedial Investigation (RI) and Feasibility Study at the Site.

In the spring of 1995, Metal Masters ceased operations and the property is currently leased and for sale.

Physical Characteristics

Geology

The Site lies within the Atlantic Coastal Plain physiographic province. Directly underlying the Site are sediments of the Pleistocene-aged Columbia Formation. The Columbia Formation sediments in the vicinity of the Site are comprised of light brown to orange brown colored coarse to fine grained sand with some gravel and gravel layers. Underlying the Columbia Formation beneath the Site are the Miocene age sediments of the Chesapeake Group which consist of dark gray silty clay.

The Columbia Formation sediments underlying the Site form a productive regional water table aquifer. The Chesapeake Group sediments form a confining layer beneath the water table aquifer. Potable water supplies in the vicinity of the Site are obtained from ground water and are provided primarily through municipal water systems. The Town of Smyrna operates two public water supply wells. Well numbers 1 and 2 are 1600 feet and 4600 feet east of the Site, respectively. The town of Clayton operates three public water supply wells. The closest of these wells, Well number 3, is located approximately 3300 feet southwest of the Site. All three of the Clayton wells are located in the upgradient ground water flow direction from the Site. The Smyrna municipal wells draw water from the Columbia Formation aquifer while the Clayton municipal wells draw water from the deeper Rancocas aquifer. In the Smyrna area, the Columbia and Rancocas aquifers are separated by the Calvert and Nanjemoy formations. These formations are 200 feet thick in the Smyrna area and act as a confining unit above the Rancocas aquifer.

Based on the well inventory conducted during the RI, several wells in the Smyrna-Clayton area are classified as domestic water wells. However, none of these wells is located in a downgradient ground water flow direction from the Site.

Ground water flow direction in the Columbia Aquifer was determined based on a four-month water level study conducted during the Clark RI (referred to herein as ''the RI''). The ground water flow direction from the Site is generally to the northeast. An eight-day water level study conducted during the RI indicated that pumping at Smyrna Well number 1 does not influence the water levels at the Site, although the Site may be within the capture zone of Smyrna Well number 1 under steady-state, long-term conditions.

Surface Drainage

The topography at the Site is nearly level. The entire Site is at an elevation of approximately 40 feet above sea level. Surface drainage from the parking lot area at and adjacent to the Site is conveyed via storm drains to a shallow drainage ditch and retention basin, with no outlet, located east of the Site. The drainage ditch and retention basin were constructed by Metal Masters after the closure of the lagoons in conjunction with the construction of the parking lot. A scrub/shrub-emergent wetland area is located within the retention basin. Since this area is only intermittently saturated as a result of storm water runoff from blacktop areas and building roofs, it is not considered to be a functional wetland.

Surface water bodies in the general area include Greens Branch, Duck Creek, Lake Como, and Mill Creek. Greens Branch is located approximately 1500 feet west of the Site and flows in a northeasterly direction into Duck Creek. Duck Creek is located approximately 4000 feet to the north of

the Site and flows east to its confluence with the Smyrna River. The Smyrna River flows to the northeast and discharges to the Delaware Bay. Lake Como is located approximately 4000 feet to the southeast of the Site and is used for recreational purposes.

Subsurface Soils

Three distinct layers were encountered in the soil borings taken during the RI in the locations of the former lagoons: (1) A surficial material consisting predominantly of silty sand to sandy silt, probable backfill material; (2) a soft, dark gray colored silt to sandy silt material containing some organic material. This most likely marks the bottom of the lagoons; and (3) native Columbia Formation sediments. Former Lagoon 1 is approximately 11.5 feet deep at its deepest point. The sandy silt material at what appears to be the bottom of Former Lagoon 1 is approximately 2 to 5.5 feet thick. In Former Lagoon 2, the sandy silt material is thinner and less aerially extensive.

As part of the RI, surface soil samples were collected from nine (9) locations. In general, the surface soil samples did not show the presence of elevated concentrations of contaminants of concern. No volatile organic compounds (VOCs) were detected in the surface soil samples other than methylene chloride, which is most likely an analytical laboratory contaminant, and no semivolatile organic compounds (SVOCs) were found. In addition, no inorganic substances were detected in any of the surface soil samples at concentrations significantly above background levels. One of the surface soil samples, however, contained several pesticides (0.93 micrograms per killigram (ug/kg) dieldrin, 0.49 ug/kg lindane, 0.57 ug/kg Heptachlor, 0.38 ug/kg DDE, 1.4 ug/kg DDT, and 0.91 ug/kg endrin). The presence of pesticides at this location may be attributable to the use of fill that was deposited on the property from a neighboring agricultural area. Several of the pesticides detected, including DDT, have been banned for as long as twenty years, indicating that the pesticides have resided in the soils for a considerable amount of time.

A total of 23 subsurface soil samples were collected from 10 soil borings to assess subsurface soil quality in the area within, adjacent to and below the former lagoons. VOCs were detected in 4 of the 23 subsurface soil samples analyzed. These compounds included acetone (10 to 46 ug/kg), xylene (6 to 950 ug/kg), carbon disulfide (8 ug/kg), 1,1,2-TCA (8 ug/kg), 2-butanone (22 ug/kg), and ethylbenzene (140 ug/kg). None of the VOCs of concern in the ground water (1,1-TCE, 1,1,1-TCA and 1,1-DCE) was detected. Semivolatile organic compounds were detected in 3 of the 23 samples. These compounds are 2-ethylhexyl phthalate (56 to 130 ug/kg) and diethyl phthalate (330 ug/kg). Pesticides were detected in 3 of the 23 samples including dieldrin (0.28 ug/kg), DDE (0.26 to 0.86 ug/kg), DDT (0.75 ug/kg), and DDD (0.38 ug/kg). Finally, chromium and zinc were detected at levels above background samples from 2 of the borings. Chromium concentrations ranged from 159 to 385 ug/kg and zinc concentrations ranged from 628 to 982 ug/kg.

Ground Water

Ground water samples were collected from 12 monitoring wells in the vicinity of the Site. VOCs were detected in 5 of the 12 wells sampled. The highest concentrations of VOCs were 1,1,1-TCA and 1,1-DCE which were detected in monitoring well S–1 at 720 ug/l and 33 ug/l, respectively. TCE was not detected in any of the ground water samples. In addition, no vinyl chloride was detected. Low levels of SVOCs were detected in samples from 5 of the 12 wells. Low levels of pesticides were also detected in samples from 5 of the 12 wells during the RI, including dieldrin, lindane, endrin and ketone. Chromium was detected at levels above background levels in four of the twelve wells. The highest total chromium concentration was detected at 87.2 ug/l. Zinc was not detected above background levels in any ground water samples collected.

The ground water and soils data presented in the RI indicate that the lagoons are not the primary source of the 1,1,1-TCA and the 1,1-DCE detected in monitoring well S–1. Neither of these contaminants was detected in any of the soils within or below the former lagoons. In addition, the pattern of contaminants detected in the ground water suggests the existence of a source unrelated to the lagoons and located to the south and upgradient of well S–1. Finally, the increase in 1,1,1-TCA concentrations in the samples from well S–1 collected in 1988 and 1992 indicates that a release of 1,1,1-TCA may have recently occurred from a source upgradient of well S–1 or recently migrated from such an upgradient source. Since 1,1-DCE is a breakdown product of 1,1,1-TCA, the same source is most likely responsible for the presence of both contaminants.

These conclusions are further supported by the findings of the Metal Masters RI [Metal Masters Food Services Company, Inc., Remedial Investigation Report (Groundwater Technology, June 1995)] conducted pursuant to an order with DNREC. The Metal Masters' RI identified three possible source areas: (1) a loading dock where drums of TCA were received, (2) a TCA Storage Area and (3) an underground sanitary sewer holding tank. Surface and subsurface soil samples were taken from these areas. Three additional monitoring wells were installed downgradient of these areas to study the ground water. The distribution of contamination in the soil and ground water indicated that the historic source of the 1,1,1-TCA and 1,1-DCE was near the TCA Storage Area. The Metal Masters' RI concluded that the TCA Storage Area, however, does not likely represent a continuing potential source because little contamination remains in the soil and Metal Masters discontinued operations in the spring of 1995.

In July of 2003, EPA conducted the final sampling event to be performed by EPA. The purpose of the sampling was to determine if a recently understood contaminant—1,4-dioxane—was present at or near the Site, and if so, at what levels. The compound 1,4-dioxane is a stabilizer present in TCA. The nearest municipal water supply well was also checked for this compound. The results of this sampling event showed very low concentrations of 1,4-dioxane (<1 part per billion). At such low levels, this contaminant does not pose any significant risk. Future monitoring will, however, include monitoring for 1,4-dioxane. In addition, the 2003 sampling results showed continued stable or decreasing levels of other site contaminants.

Despite the slightly elevated levels of contaminants found at the Site, these investigations found that there was no elevated risk at present because all residents near the Site are serviced by the municipal water supply. The potential for a future elevated risk existed because of the possibility that drinking water wells could be installed in the future that would draw contaminated water from the Site. The GMZ that encompasses the Site protects residents that might have otherwise installed wells from the slightly elevated contaminant levels.

Community Involvement

Public participation activities have been satisfied as required in CERCLA 113(k), 42 U.S.C. 9613(k), and CERCLA 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

One of the criteria for site deletions, set forth in Section 300.425(e)(1)(i) of the NCP, specifies that EPA may delete a site from the NPL if ''[r]esponsible parties or other persons have implemented all appropriate response actions required.'' EPA, with the concurrence of the State of Delaware, believes that this criterion has been met. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 29, 2004 unless EPA receives adverse comments by February 27, 2004 on this notice or the parallel notice of intent to delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 18, 2003.

Donald S. Welsh,

Regional Administrator, U.S. EPA Region III.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended under Delaware (''DE'') by removing the site name ''Tyler Refrigeration Pit, Smyrna.''

[FR Doc. 04–1821 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 03–329]

Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revised the definition of unencrypted broadcast television adopted in its earlier *Second Report and Order and Second Further Notice of Proposed Rulemaking* in this proceeding. This revision clarifies a potential conflict between our stated intent and the scope of the rules. This action is taken to further the digital television transition and the commercial availability of navigation devices pursuant to section 629 of the Communications Act.

DATES: Effective February 27, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Mort, *susan.mort@fcc.gov*, (202) 418–1043.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order on Reconsideration*, FCC 03–329, adopted on December 19, 2003, and released on December 23, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov*.

Summary of the Order on Reconsideration

1. In our recent *Second Report and Order and Second Further Notice of Proposed Rulemaking* in this proceeding, we adopted encoding rules that included, inter alia, a prohibition on the down resolution of unencrypted broadcast programming and caps on the level of copy protection that may apply to various categories of MVPD programming. The copy protection caps included a prohibition on the imposition of copy restrictions on unencrypted broadcast television. Our stated goal in adopting these encoding rules was to strike a measured balance between the rights of content owners and the home viewing expectations of consumers, while ensuring competitive parity among MVPDs.

2. Following release of the *Second Report and Order and Second Further Notice of Proposed Rulemaking*, a potential conflict between our stated intent and the scope of the rules became apparent. The limitation of the encoding rules for broadcast television programming to ''Unencrypted Broadcast Television'' could inadvertently be interpreted to create a competitive disparity in so far as certain MVPDs encrypt their broadcast signals while others do not. The resulting imbalance could also negatively impact consumers who would otherwise expect to have the same viewing and recording capabilities for broadcast television programming regardless of distribution platform. To prevent this unintended consequence, by our own motion we revise the definition of Unencrypted Broadcast Television in our encoding rules as set forth herein.

3. *Paperwork Reduction Act of 1995 Analysis.* This *Order on Reconsideration* does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

4. *Regulatory Flexibility Act:* As required by the Regulatory Flexibility Act, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') relating to this *Order on Reconsideration*. The Supplemental FRFA is set forth within.

5. *Ordering Clauses:* Pursuant to the authority contained in sections 1, 4(i) and (j), 303, 403, 405, 601, 624A and 629 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 303, 403, 405, 521, 544a and 549, the Commission's rules are hereby amended as set forth herein, and shall become effective February 27, 2004.

Supplemental Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Further Notice of Proposed Rulemaking* (''FNPRM'') in this proceeding. The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. Based upon the comments in response to the FNPRM

and the IRFA, the Commission included a Final Regulatory Flexibility Analysis (''FRFA'') in the *Second Report and Order and Second Further Notice of Proposed Rulemaking* (''Digital Cable Compatibility Order and FNPRM'') in this proceeding. In this *Order on Reconsideration*, the Commission is, on its own motion, amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis (''Supplemental FRFA'') addresses those amendments and conforms to the RFA.

7. *Need for, and Objectives of, the Order on Reconsideration.* In the Digital Cable Compatibility Order and FNPRM, the Commission adopted regulations setting a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as for other unidirectional digital cable products. These regulations include, inter alia, technical standards, a labeling regime and encoding rules for audiovisual content delivered by multichannel video programming distributors (''MVPD''). The objective of the final rules is to facilitate the DTV transition and ensure parity among MVPDs. However, the encoding rule adopted in the Digital Cable Compatibility Order and FNPRM prohibiting MVPDs from encoding unencrypted broadcast television with copy restrictions or to trigger down resolution may be susceptible to different interpretations and could create an imbalance between different MVPDs in so far as certain providers typically encrypt the broadcast television signals that they retransmit whereas others do not or cannot. This *Order on Reconsideration* amends the encoding rules to cover all broadcast television programming that is unencrypted when originally broadcast, regardless of whether or not they are carried in encrypted form by an MVPD.

8. *Summary of Significant Issues Raised in Response to the FRFA.* No parties have addressed the FRFA in any subsequent filings.

9. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small Business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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'').

10. As noted, a FRFA was incorporated into the Digital Cable Compatibility Order and FNPRM. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules. Those entities consist of: television broadcasting stations, cable and other program distribution (which includes, among others, cable operators, direct broadcast satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, Instructional Television Fixed Service, local multipoint distribution service, satellite master antenna television systems, and open video systems), electronics equipment manufacturers, and computer manufacturers. In this present *Order on Reconsideration,* the Commission is amending the final rules adopted in the Digital Cable Compatibility Order and FNPRM on its own motion. In this Supplemental FRFA, we incorporate by reference the description and estimate of the number of small entities from the FRFA in this proceeding.

11. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* Among the final rules adopted in the Digital Cable Compatibility Order and FNPRM, is a prohibition on all MVPDs from encoding unencrypted broadcast television programming to activate copy restrictions or down-resolution. This *Order on Reconsideration* revises this prohibition to encompass all broadcast television programming that is unencrypted when broadcast, regardless of the form in which it is carried by an MVPD.

12. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

13. In the Digital Cable Compatibility Order and FNPRM, we concluded that the encoding prohibitions on selectable output controls and the down-resolution of unencrypted broadcast programming would largely impact upon the DBS industry, which is primarily composed of large entities. Similarly, while we concluded that the caps on copy protection would affect all MVPDs, we believed they would not have a negative impact on small entities. We do not believe that our revision of the encoding rules in this Order on Reconsideration changes our earlier conclusions.

14. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

15. *Report to Congress:* The Commission will send a copy of the *Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television, Incorporation by reference, Recordings, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 2. Revise paragraph (s) of § 76.1902 to read as follows:

§ 76.1902 Definitions.

* * * * *

(s) *Unencrypted broadcast television* means the retransmission by a covered entity of any service, program, or schedule or group of programs originally broadcast in the clear without use of a commercially-adopted access control method by a terrestrial television broadcast station regardless of whether such covered entity employs an

access control method as a part of its retransmission.

* * * * *

[FR Doc. 04–1836 Filed 1–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 011604C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective January 1, 2004, through December 31, 2004. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2004. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through February 12, 2004.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: pat.moran@noaa.gov).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Sarah McLaughlin, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9279, fax: 978–281–9135, e-mail: Sarah.McLaughlin@noaa.gov) and from NAFO on the World Wide Web at http://www.nafo.ca.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2003 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2004. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

(1) RedfishNAFO Division 3M 69 mt

(2) SquidNAFO Subareas 3 & 4 453 mt

(3) ShrimpNAFO Division 3L 144 mt

(4) ShrimpNAFO Division 3M 1 vessel/100 days

Additionally, U.S. vessels may be authorized to fish any portion of the 7,500 mt TAC of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K. Fishing opportunities may also be authorized for U.S. fishermen in the ''Others'' category for: Division 3LNO yellowtail flounder (73 mt) and Division 3LMNO Greenland halibut (985 mt). Procedures for obtaining NMFS authorization are specified below.

U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the U.S. fish quota allocations and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of a valid High Seas Fishing Compliance (HSFC) permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see *ADDRESSES*). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

If it appears that interest by U.S. fishermen to use the 2004 3L shrimp allocation is not sufficient, NMFS may consider transferring the 3L shrimp allocation to another NAFO Contracting Party for the purpose of promoting new opportunities for U.S. fishermen in NAFO or other fisheries. NMFS is currently exploring such an opportunity with Canada to fish for yellowtail flounder. U.S. fishermen interested in learning about opportunities to pursue a limited yellowtail flounder fishery in Canada during 2004 should contact the agency officials designated in this notice for more information.

Note that vessels issued valid HSFC permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the HSFC permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2004 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFCA permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum

size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2004 NAFO 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2004 U.S. effort allocation for 3M shrimp. Under NAFO rules in effect through 2004, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. effort allocation provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional monthly fishing days in Division 3M within 30 days following the calendar month in which the catches were made; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the United States may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed 6 months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to notify NAFO and transfer the U.S. 3M shrimp effort allocation to the appropriate Contracting Party.

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded. Please note that if the U.S. portion of the 2004 NAFO 3M shrimp effort allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: January 22, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–1813 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031216315–3515–01 I.D. 112803A]

RIN 0648–AR68

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the emergency rule published on January 8, 2004, for the Pacific Coast groundfish fishery.

DATES: Effective January 28, 2004, through February 29, 2004.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2004 fishing year (January 1 - December 31, 2003) are initially being published in this **Federal Register** as an emergency rule for January 1 - February 29, 2004 (69 FR 1322, January 8, 2004) and as a proposed rule for March 1 - December 31, 2004 (69 FR 1380, January 8, 2004).

Management measures for the Pacific Coast groundfish fishery, effective January 1 - February 29, 2004 (69 FR 1322, March 7, 2003), contained errors in the trawl trip limit tables, in the open access table (South), and in the rockfish conservation area (RCA) boundary coordinates around California's Channel Islands that require correction. The trawl trip limit table (North) is revised to clarify that for the DTS complex (Dover sole, thornyheads, sablefish,) small footrope gear restrictions that apply ''North or South'' refer to north or south of 40°deg;10′ N. lat. The trawl trip limit table (South) is revised to clarify that the trawl RCA between 40°10′ N. lat. and 34°27′ N. lat. is measured from the mainland coast of California and, for January-February, consists of an area between a line connecting latitude and longitude coordinates approximating the 75–fm (137–m) depth contour and a line connecting latitude and longitude coordinates approximating the 150–fm (274–m) depth contour. South of

34°deg;27′ N. lat., the trawl RCA has the same boundaries measured from the mainland coast as the area between 40°10′ N. lat. and 34°deg;27′ N. lat., but the RCA is designated around islands as between the shoreline and a line connecting latitude and longitude coordinates approximating the 150–fm (274–m) depth contour. This same revision is made to the open access trip limit table (South) in lines 40–41, which define the trawl RCA for exempted trawl gear. In addition to trip limit tables, the RCA boundary coordinates around California's Channel Islands also require correction. The specific latitude and longitude coordinates that approximate the 150–fm (274–m) depth contour around Santa Catalina Island are corrected to closer approximate the 150 fm (274–m) depth contour and a typographic error in one of the coordinates comprising the RCA boundary approximating the 60–fm (110–m) depth contour around the northern Channel Islands is corrected.

Corrections

In the rule FR Doc. 03–31619, in the issue of Thursday, January 8, 2004 (69 FR 1322) make the following corrections:

■ 1. On page 1338, in section IV., under A. General Definitions and Provisions, paragraph (17)(f)(v)(A)(13) is corrected to read as follows:

* * * * *

(13) 34°02.80′ N. lat., 119°21.4′ W. long.;

* * * * *

■ 2. On page 1350, in section IV., under A. General Definitions and Provisions, paragraphs (17)(f)(ix)(B)(1)–(14) are corrected to read as follows:

* * * * *

(1) 33°17.24′N. lat., 118°12.94′ W. long.;

(2) 33°23.60′N. lat., 118°18.79′ W. long.;

(3) 33°26.00′N. lat., 118°22.0′ W. long.;

(4) 33°27.57′N. lat., 118°27.69′ W. long.;

(5) 33°29.78′N. lat., 118°31.01′ W. long.;

(6) 33°30.46′N. lat., 118°36.52′ W. long.;

(7) 33°28.65′N. lat., 118°41.07′ W. long.;

(8) 33°23.23′N. lat., 118°30.69′ W. long.;

(9) 33°20.97′N. lat., 118°33.29′ W. long.;

(10) 33°19.81′N. lat., 118°32.24′ W. long.;

(11) 33°18.00′N. lat., 118°28.00′ W. long.;

(12) 33°15.62′N. lat., 118°14.74′ W. long.;

(13) 33°16.00′N. lat., 118°13.00′ W. long.; and

(14) 33°17.24′N. lat. 118°12.94′ W. long.

* * * * *

■ 3. On pages 1364–1367, Table 3 (North) and Table 3 (South) are corrected to read as follows:

BILLING CODE 3510–22–S

Table 3 (North). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table 102003

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	75 fm - modified 200 fm [11/]	60 fm - 200 fm		75 fm - 150 fm	75 fm - 200 fm	75 fm - modified 200 fm [11/]
	Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
	A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**						
1	**Minor slope rockfish[3/]**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**	Providing only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time in any area (North or South of 40°10' N. lat., shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply.					
4	Sablefish						
5	large footrope or midwater trawl gear	9,300 lb/ 2 months		8,700 lb/ 2 months			6,200 lb/ 2 months
6	small footrope gear[7/]	2,000 lb/ 2 months		5,000 lb/ 2 months			2,000 lb/ 2 months
7	Longspine thornyhead						
8	large footrope or midwater trawl gear	15,000 lb/ 2 months		10,000 lb/ 2 months			
9	small footrope gear[7/]	1,000 lb/ 2 months					
10	Shortspine thornyhead						
11	large footrope or midwater trawl gear	3,150 lb/ 2 months		2,100 lb/ 2 months			
12	small footrope gear[7/]	1,000 lb/ 2 months					
13	Dover sole						
14	large footrope or midwater trawl gear	67,500 lb/ 2 months		21,000 lb/ 2 months (providing large footrope, small footrope, and/or midwater trawl gear is used)			45,000 lb/ 2 months
15	small footrope gear[7/]	10,000 lb/ 2 months					10,000 lb/ 2 months
16	**Flatfish**	Providing only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period, then large footrope trawl trip limits apply. If small footrope gear[7/] is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then small footrope trawl limits apply.					
17	All other flatfish, Petrale sole, & Rex sole						
18	large footrope or midwater trawl gear for All other flatfish[4/] & Rex sole	100,000 lb/ 2 months					
19	large footrope or midwater trawl gear for Petrale sole	Not limited	100,000 lb/ 2 months				Not limited
20	small footrope gear[7/]	30,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.			30,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.
21	Arrowtooth flounder						
22	large footrope or midwater trawl gear	Not limited	150,000 lb/ 2 months				Not limited
23	small footrope gear[7/]	4,000 lb/ 2 months	6,000 lb/ 2 months				4,000 lb/ 2 months

Table 3 (North). Continued

24	**Whiting**[5/]	Before the primary whiting season: 20,000 lb/trip -- During the primary season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip		
25	**Minor shelf rockfish**[3/] **& Widow rockfish**			
26	large footrope trawl	CLOSED[6/]		
27	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/]		12,000 lb/ 2 months
28	midwater for Minor shelf rockfish or small footrope trawl[7/]	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
29	**Canary rockfish**			
30	large footrope trawl	CLOSED[6/]		
31	midwater or small footrope trawl[7/]	100 lb/ month	300 lb/ month	100 lb/ month
32	**Yellowtail**			
33	large footrope trawl	CLOSED[6/]		
34	midwater trawl	Before the primary whiting season: CLOSED[6/] -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See IV.B.(3)(b) for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED[6/]		18,000 lb/ 2 months
35	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb of which may be landed without flatfish.		
36	**Minor nearshore rockfish**			
37	large footrope trawl	CLOSED[6/]		
38	midwater or small footrope trawl[7/]	300 lb/ month		
39	**Lingcod**[8/]			
40	large footrope trawl	CLOSED[6/]		
41	midwater or small footrope trawl[7/]	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months
42	**Other Fish**[9/]	Not limited		

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(17)(f), that may vary seasonally.
11/ The "modified 200 fm" line is modified to incorporate petrale sole fishing grounds.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). 2004 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply – Read Sections IV. A. and B. NMFS Actions before using this table 102003

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[10/] (RCA):						
	40°10' - 34°27' N. lat.	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)		100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)		75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	
	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	
	Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
	A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**						
1	**Minor slope rockfish[3/]**						
2	40°10' - 38° N. lat.	7,000 lb/ 2 months					
3	South of 38° N. lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	7,000 lb/ 2 months					
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	11,250 lb/ 2 months		7,500 lb/ 2 months			
9	Longspine thornyhead	15,000 lb / 2 months		10,000 lb / 2 months			
10	Shortspine thornyhead	3,000 lb/ 2 months		2,000 lb/ 2 months			
11	Dover sole	39,000 lb/ 2 months		26,000 lb/ 2 months			
12	**Flatfish**						
13	All other flatfish[4/] & Rex sole	100,000 lb/ 2 months	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole				100,000 lb/ 2 months
14	Petrale sole	No limit					No limit
15	Arrowtooth flounder	No limit	10,000 lb/ 2 months				No limit
16	**Whiting[5/]**	Before the primary whiting season: 20,000 lb/trip – During the primary whiting season: mid-water trawl permitted in the RCA. See IV.B.(3)(b) for season and trip limit details. – After the primary whiting season: 10,000 lb/trip					
17	**Minor shelf rockfish, Widow, and Chilipepper rockfish[3/]**	Providing only large footrope trawl gear is used to land any groundfish species during the entire limit period, then large footrope limit applies.					
18	large footrope trawl for Minor shelf rockfish	300 lb/ month					
19	large footrope trawl for Chilipepper rockfish	2,000 lb/ 2 months					
20	large footrope or midwater trawl for Widow rockfish	CLOSED[6/]					
21	midwater for Minor shelf or Chilipepper rockfish or small footrope trawl[7/]	300 lb/ month					
22	**Bocaccio**	Providing only large footrope trawl gear is used to land any groundfish species during the entire limit period, then large footrope limit applies.					
23	large footrope trawl	100 lb/month					
24	midwater or small footrope trawl[7/]	CLOSED[6/]					
25	**Canary rockfish**						
26	large footrope trawl	CLOSED[6/]					
27	midwater or small footrope trawl[7/]	100 lb/ month		300 lb/ month		100 lb/ month	

Table 3 (South). Continued

28	**Cowcod**	CLOSED[6/]		
29	**Minor nearshore rockfish**			
30	large footrope trawl	CLOSED[6/]		
31	midwater or small footrope trawl[7/]	300 lb/ month		
32	**Lingcod[8/]**			
33	large footrope trawl	CLOSED[6/]		
34	midwater or small footrope trawl[7/]	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months
35	**Other Fish[9/]**	Not limited		

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip all year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 4. On pages 1373–1374 Table 5 (South) is corrected to read as follows:

Table 5 (South). 2004 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):						
	40°10' - 34°27' N. lat.	30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		20 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)		30 fm - 150 fm (also applies around islands, there is an additional closure between the shoreline and 10 fm around the Farallon Islands)	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
1	**Minor slope rockfish[2/]**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED[5/]					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**Rex sole**						
15	**All other flatfish[3/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months				
20	**Canary rockfish**	CLOSED[5/]					
21	**Yelloweye rockfish**	CLOSED[5/]					
22	**Cowcod**	CLOSED[5/]					
23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED[5/]	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	CLOSED[5/]	100 lb/ 2 months				
26	**Minor nearshore rockfish**						
27	Shallow nearshore						
28	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
29	South of 34°27' N. lat.	CLOSED[5/]	300 lb/ 2 months				
30	Deeper nearshore						
31	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED[5/]	500 lb/ 2 months		400 lb/month	500 lb/ 2 months
32	South of 34°27' N. lat.	CLOSED[5/]	500 lb/ 2 months	600 lb/ 2 months			400 lb/ 2 months
33	California scorpionfish	CLOSED[5/]	300 lb/ 2 months		400 lb/ 2 months		300 lb/ 2 months

Table 5 (South). Continued

34	**Lingcod**[4/]	CLOSED[5/]	300 lb/ month, when nearshore open	CLOSED[5/]
35	**Other Fish**[6/]	Not limited		
36	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*			
37	South	**Effective April 1 - October 31, 2004:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
38	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**			
39	**EXEMPTED TRAWL Rockfish Conservation Area**[7/] **(RCA):**			
40	40°10' - 34°27' N. lat.	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	100 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)	75 fm - 150 fm (additional closure between the shoreline and 10 fm around the Farallon Islands)
41	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
42		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 33).		

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(17)(f), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

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

Dated: January 21, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–1691 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register

Vol. 69, No. 18

Wednesday, January 28, 2004

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

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2004–3]

Proposed Statement of Policy Regarding Naming of Treasurers in Enforcement Matters

AGENCY: Federal Election Commission.

ACTION: Draft statement of policy with request for comments.

SUMMARY: The Commission is considering exercising its discretion in enforcement matters to clarify when it intends to name a treasurer of a political committee in his or her official capacity as treasurer, and when it intends to name the treasurer in his or her personal capacity. For most enforcement matters involving a political committee, the Commission may decide, as a matter of policy, to name the treasurer in his or her official capacity. However, where a treasurer has apparently breached a personal obligation owing by virtue of his or her responsibilities under the Act and regulations, or a prohibition that applies to individuals, the Commission may decide to name that treasurer as a respondent in his or her personal capacity. The Commission seeks comments on the policy under consideration, and on how it should exercise its prosecutorial discretion on this subject in matters arising in its Administrative Fines Program.

DATES: Comments must be submitted on or before February 27, 2004.

ADDRESSES: All comments should be addressed to Peter G. Blumberg, Attorney, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *treas2004@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Peter G. Blumberg, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposes modifying its current practice to name more clearly treasurers in their ''official'' and/or ''personal'' capacities.[1] Specifically, when a complaint asserts sufficient allegations to warrant naming a committee as a respondent, the committee's current treasurer would also be named as a respondent in his or her official capacity. In these circumstances, reason-to-believe and probable cause findings against the committee would also be made as to the current treasurer in his or her official capacity. When the complaint asserts allegations that involve a past or present treasurer's violation of obligations that the Act or regulations impose specifically on treasurers, or prohibitions that apply to individual persons, then that treasurer would be named in his or her personal capacity, and findings would be made against the treasurer in that capacity. Thus, in some matters the current treasurer could be named in both official and personal capacities.

The proposed policy modification would provide clearer notice to respondents and the public as to the nature of the Commission's enforcement actions, improve the perception of fairness among the regulated community, and merge the Commission's treasurer designation into conceptually familiar legal principles for the federal judiciary.[2] In explaining the proposed policy change, this section first surveys the law on the official/personal capacity distinction; next, addresses when treasurers are properly named in their official or personal capacity or both; and finally, confronts the reoccurring issues of successor treasurers and substitution.

II. The Official/Personal Capacity Distinction

In the seminal case of *Kentucky* v. *Graham,* 473 U.S. 159 (1985), the United States Supreme Court discussed the distinction between official capacity and personal capacity suits. The Court determined that a suit against an officer in her official capacity ''generally represent[s] only another way of pleading an action against an entity of which an officer is an agent.'' *Id.* at 165. In other words, an official capacity proceeding ''is not a suit against the official but rather is a suit against the official's office.'' *Will* v. *Mich. Dept. of State Police,* 491 U.S. 58, 71 (1989). Accordingly, ''an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.'' *Graham,* 473 U.S. at 166. Therefore, in an official capacity suit, the plaintiff seeks a remedy from the entity, not the particular officer personally.

A ''personal-capacity action is * * * against the individual defendant, rather than * * * the entity that employs him.'' *Id.* at 167–68. Since a ''[p]ersonal-capacity suit[] seek[s] to impose personal liability upon'' a particular individual, the individual is the true party in interest. *Id.* Liability lies with the particular officer personally, not with the officer's position. *See id.* at 166 n.11 (''Should the official die pending final resolution of a personal-capacity action, the plaintiff would have to pursue his action against the decedent's estate.''); *see also Hafer* v. *Melo,* 502 U.S. 21, 27 (1991) (''officers sued in their personal capacity come to court as individuals'').

[1] The terms ''official capacity'' and ''representative capacity'' are generally interchangeable, as are the terms ''personal capacity'' and ''individual capacity.'' *See McCarthy* v. *Azure,* 22 F.3d 351, 359 n.12 (1st Cir. 1994).

[2] As discussed *infra* Part II.A., the phrases ''official capacity'' and ''personal capacity'' are legal terms of art that permeate such fields as sovereign immunity, bankruptcy, corporations, and federal procedure. Their usage instantaneously identifies for the judiciary when the Commission is pursuing treasurers by virtue of their position, rather than by product of their actions.

The ''distinction between claims aimed at a defendant in his individual as opposed to representative capacity can be found across the law.'' *McCarthy,* 22 F.3d at 360 (citing numerous Supreme Court, lower court, and state cases referencing differences between individual and official capacity claims in multiple fields of law).[3] The official capacity/individual capacity distinction also carries societal significance. As the McCarthy court explained:

> The ubiquity of the [official capacity/individual capacity] distinction is a reflection of the reality that individuals in our complex society frequently act on behalf of other parties—a reality that often makes it unfair to credit or blame the actor, individually, for such acts. At the same time, the law strikes a wise balance by refusing automatically to saddle a principal with total responsibility for a representative's conduct, come what may, and by declining mechanically to limit an injured party's recourse to the principal alone, regardless of the circumstances.

Id.

III. Naming Treasurers in Their Official Capacity

Naming the current treasurer in his or her official capacity would improve the Commission's enforcement practice in a number of ways. Most importantly, it would clarify that findings by the Commission (whether ''Reason To Believe'' or ''Probable Cause To Believe'') or the signing of a conciliation agreement only concerns the treasurer in his or her capacity as representative of the committee, not personally. The practice would also ensure that a named individual who signs the conciliation agreement on behalf of the committee (or obtains legal representation on behalf of the committee) is the one empowered by law to disburse committee funds to pay a civil penalty, disgorge funds, make refunds, and carry out other monetary remedies that the committee agrees to through the conciliation agreement.[4] Also, naming a treasurer (in his or her official capacity), as opposed to naming simply the office of treasurer or just the committee, not only provides the Commission with an individual in every instance to serve with notices throughout the proceeding, but also results in more accountability on behalf of the committee—that is, a particular person who will ensure that a committee is responsive to Commission findings.[5] Finally, specifying whether a treasurer is named in his or her official or personal capacity would be consistent with use of these terms as pleading conventions in court actions. A probable cause finding against a treasurer in his or her official capacity would make clear to a district court in enforcement litigation that the Commission is seeking relief against the committee, and would only entitle the Commission to obtain a civil penalty from the committee. *See Graham*, 473 U.S. at 165.

IV. Naming Treasurers in Their Personal Capacity

The Act places certain legal obligations on committee treasurers, the violation of which makes them personally liable. *See, e.g.*, 2 U.S.C. 432(c) (keep an account of various committee records), 432(d) (preserve records for three years), 434(a)(1) (file and sign reports of receipts and disbursements). The Commission's regulations further require a treasurer to examine and investigate contributions for evidence of illegality. *See* 11 CFR 103.3. Due to their ''pivotal role,'' treasurers may be held personally liable for failing to fulfill their responsibilities under the Act and the Commission's regulations. *See Toledano*, 317 F.3d at 947 (''The Act requires every political committee to have a treasurer, 2 U.S.C. 432(a), and holds him personally responsible for the committee's recordkeeping and reporting duties, id. 432(c)–(d), 434(a). * * * Federal law makes the treasurer responsible for detecting [facial contribution] illegalities, 11 CFR 103.3(b), and holds him personally liable if he fails to fulfill his responsibilities, *see* 2 U.S.C. 437g(d). * * *'') (emphasis added); *see also FEC* v. *John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985 (D.N.J. 1986) (holding treasurer responsible for failing to ''make * * * best efforts to determine the legality of'' an excessive contribution); *FEC* v. *Gus Savage for Cong. '82 Comm.*, 606 F. Supp. 541, 547 (N.D. Ill. 1985) (''It is the treasurer, and not the candidate, who becomes the named defendant in federal court, and subjected to the imposition of penalties ranging from substantial fines to imprisonment.''); 104.14(d) (''Each treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.'') (emphasis added). Thus, a treasurer would be named as a respondent in a MUR in his or her personal capacity, and findings would be made against a treasurer in the same capacity, when the MUR involves the treasurer's personal violation of a legal obligation that the statute or regulations impose specifically on committee treasurers and when a reasonable inference from the alleged violation is that the treasurer knew, or should have known, about the facts constituting a violation.[6]

Similarly, if a past or present treasurer violates a prohibition that applies to individuals, the treasurer would be named as a respondent in his or her personal capacity, and findings would be made against the treasurer in that capacity. In this way, a treasurer would be treated no differently than any other individual who violates a provision of the Act.[7] Should the Commission file suit in district court following a finding of probable cause against a treasurer in his or her personal capacity, judicial relief, including an injunction and payment of a civil penalty, could be obtained against the treasurer personally. *Graham,* 473 U.S. at 166–168. In any scenario, the Commission would, of course, remain free to exercise its prosecutorial discretion not to pursue a respondent.[8]

When the Commission obtains relief from a treasurer personally, the obligation will follow the individual. Thus, when a treasurer in his or her

[3] *See Graham,* 473 U.S. at 165 (42 U.S.C. 1983); *Stafford* v. *Briggs,* 444 U.S. 527, 544 (1980) (venue determination); *Ex Parte Young,* 209 U.S. 123, 159 (1908) (Eleventh Amendment); *Northeast Fed. Credit Union* v. *Neves,* 837 F.2d 531, 534 (1st Cir. 1988) (jurisdictional purposes); *Pelkoffer* v. *Deer,* 144 B.R. 282, 285–86 (W.D. Pa. 1992) (bankruptcy); *Estabrook* v. *Wetmore,* 529 A.2d 956, 958 (N.H. 1987) (applying doctrine that acts of a corporate employee performed in his corporate capacity generally do not form the basis for personal jurisdiction over him in his individual capacity).

[4] In the absence of a treasurer, ''the financial machinery of the campaign grinds to a halt. * * *'' *FEC* v. *Toledano*, 317 F.3d 939, 947 (9th Cir. 2003), *reh'g denied; see* 2 U.S.C. 432(a) (''No expenditure shall be made * * * without the authorization of the treasurer or *his or her* designated agent.''); 11 CFR 102.7(a) (designation of assistant treasurer).

[5] Such accountability may be especially helpful in matters involving committees that tend to be ephemeral—existing for only a short time before permanently disbanding operations.

[6] Indeed, if FECA were construed to impose liability on treasurers only in their official capacities, it would effectively mean that only committees are liable for violations under the statute—which would have been easy enough for Congress to accomplish by writing the Act to impose reporting, recordkeeping, and other duties on ''committees'' rather than ''treasurers.''

[7] The Act and the Commission's regulations prohibit any ''person'' which includes individuals, from engaging in certain kinds of conduct. *See, e.g.*, 2 U.S.C. 432(b) (forward contributions to the committee's treasurer), 441e (receipt of contributions from foreign nationals), and 441f (making and knowingly accepting contributions in the name of another).

[8] For example, the Commission, in some cases, may decide not to pursue a predecessor treasurer who technically has personal liability where the committee, through its current treasurer, has agreed to pay a sufficient civil penalty and to cease and desist from further violations of the Act.

personal capacity agrees to pay a civil penalty through a conciliation agreement, or is ordered to pay a civil penalty by a district court, a personal obligation exists to pay the civil penalty. (A separate civil penalty would likely be assessed against the committee itself.) Likewise, a cease and desist provision (negotiated through conciliation) or an injunction (imposed by a district court) against a treasurer in his or her personal capacity will still apply to that treasurer in the event he or she moves on to become treasurer with another committee. *Cf. Sec'y Exch. Comm'n* v. *Coffey*, 493 F.2d 1304, 1311 n.11 (6th Cir. 1974) (''The significance of naming an officer * * * personally is that 'otherwise he is bound only as long as he remains an officer * * *, whereas if he is named [personally] he is personally enjoined without limit of time.' '') (quoting 6 L. Loss, Securities Regulation 4113 (1969, supp. to 2d ed.)).[9]

V. Naming Treasurers in Both Capacities

Treasurers would be initially generated as respondents in both their official and personal capacities only with respect to allegations that directly relate to reporting, recordkeeping, and other duties specifically imposed by the Act on treasurers. *See, e.g., United States* v. *Johnson*, 541 F.2d 710, 711 (8th Cir. 1976) (applying a similar standard in an action involving the Federal Trade Commission when finding that ''[t]he propriety of including a person both as an individual and as a corporate officer in a cease and desist order has consistently been upheld in instances where the person included was instrumental in formulating, directing and controlling the acts and practices of the corporation'') (citing *Fed. Trade Comm'n* v. *Standard Ed. Soc'y*, 302 U.S. 112 (1937); *Standard Distrib.* v. *Fed. Trade Comm'n*, 211 F.2d 7 (2d Cir. 1954); *Benrus Watch Co.* v. *Fed. Trade Comm'n*, 352 F.2d 313 (8th Cir. 1965)). However, if the Office of General Counsel (''OGC'') is persuaded through the respondent's response to the complaint, or the response to the Factual and Legal Analysis, or the Respondent's Brief at the Probable Cause stage, or an investigation, that the treasurer was unaware, and had no reason to know, of the operative facts giving rise to a violation, OGC would recommend that findings against the treasurer only be made in his or her official capacity.

On the other hand, if a complaint alleges a violation such as coordination or receipt of contributions in the name of another, the same reasonable inference as to the treasurer's knowledge of the operative facts would not be drawn as a routine matter. The Commission proposes with respect to complaints of this nature that the treasurer would initially be named as a respondent only in his or her official capacity. Notably, in these cases the reporting violation stems from the same operative facts as the principal violation. Only if OGC learns later that the treasurer had knowledge of the operative facts—for example, the treasurer knew that an in-kind contribution stemming from coordination went unreported—might the Commission make findings against the treasurer in his or her personal capacity.

In cases where the treasurer has both official and personal liability, the respondents would be named as ''John Doe for Congress and Joe Smith, in his official capacity as treasurer and in his personal capacity.'' Alternatively, the respondents might be named as ''John Doe for Congress and Joe Smith, in his official capacity as treasurer'' and ''John Doe, in his personal capacity.'' Where a treasurer has been named in both his or her official and personal capacities, any resulting conciliation agreement would be signed by the current treasurer on behalf of both the committee and the treasurer in his or her personal capacity.

VI. Successor Treasurers/Substitution

An issue closely related to the official/personal capacity distinction is whether a successor treasurer may be substituted for a predecessor treasurer. Often the specific individual who was the treasurer at the time of a violation is no longer the treasurer when the Commission undertakes the enforcement process. Whether the successor treasurer or the predecessor treasurer should be named as the respondent depends on whether the Commission is pursuing the treasurer in his or her official capacity, personal capacity, or both.

Under the present practice, when OGC discovers that a committee has changed treasurers since the point of the underlying violation, OGC typically notes the change of treasurer, the date of the change, the former treasurer's name, and indicates whether an amendment was made to the Statement of Organization in its next report to the Commission. If a treasurer change is made after a finding of reason to believe, then OGC typically includes the new treasurer and notes the change in its next report on the matter. If a treasurer change is made after a finding of probable cause to believe, OGC sends the new treasurer a supplemental probable cause brief (incorporating the prior probable cause brief), which states that the Commission found probable cause to believe against the committee and the treasurer's predecessor and will recommend probable cause against the new treasurer. After receiving a response or waiting until the expiration of the response period, OGC typically returns to the Commission with a recommendation to find probable cause to believe against the new treasurer.

When the Commission pursues a current treasurer in his or her official capacity, any successor treasurer would be substituted for the predecessor treasurer. In such cases, the Commission is pursuing the official position (and, therefore, the entity), not the individual holding the position. *See Will*, 491 U.S. at 71. Because an official capacity action is an action against the treasurer's position, the Commission may summarily substitute a new treasurer in his or her official capacity at any stage prior to a finding of probable cause to believe.[10]

When a predecessor treasurer is personally liable, the Commission would pursue the predecessor treasurer individually, and not substitute the successor treasurer for the predecessor treasurer individually. *See* fn. 7; *Graham*, 473 U.S. at 167–68. There would be no legal basis for imputing personal liability from a predecessor treasurer's misconduct to a successor treasurer who did not personally engage in the misconduct.

If the Commission were to pursue a treasurer both officially and individually and this treasurer is later replaced, the Commission would continue to pursue the predecessor treasurer for any violations for which he or she is personally liable, and substitute the successor treasurer for official capacity violations. Absent some independent basis of liability, the

[9] In some cases, initially, the Commission does not have information that would indicate that the Commission should pursue a treasurer in his or her personal capacity for a violation. However, at a later stage of the enforcement process, evidence may arise that indicates that a treasurer is personally liable for a violation. In these instances, the Commission would exhaust the Act's administrative prerequisites to suit before filing suit against the treasurer in his or her personal capacity. *See* 2 U.S.C. 437g(a)(3); *FEC* v. *Nat'l Rifle Ass'n*, 553 F. Supp. 1331, 1337–38 (D.D.C. 1983).

[10] Pursuant to the proposed policy, the Commission would not be legally obligated to undertake the requirements of 2 U.S.C. 437g(a)(3) when a successor treasurer undertakes his or her position; although not legally required to do so, the Commission would intend to inform a new treasurer of the pending action and make copies of the briefs available to the successor treasurer.

Commission would not pursue intermediate treasurers.[11] *See Cal. Democratic Party* v. *FEC,* 13 F. Supp. 2d 1031, 1037 (E.D. Cal. 1998) (dismissing individual capacity claims against a former treasurer because ''there is no allegation that [the treasurer] violated any personal obligation'' and dismissing official capacity claims against him ''since [he] is no longer treasurer * * * and thus, is not the appropriate person against whom an official capacity suit can be maintained. * * *'').[12]

VII. Proposed Policy

In light of the considerations explained above, the Commission is considering exercising its discretion in enforcement matters by naming treasurers as follows:

1. In all enforcement actions where a political committee is a respondent, name as respondents the committee and its current treasurer ''in (his or her) official capacity as treasurer.''

2. In enforcement actions where a treasurer has apparently breached a personal obligation owing by virtue of his or her responsibilities under the Act and regulations, or a prohibition that applies to individuals, name that treasurer as a respondent ''in (his or her) personal capacity.''

The Commission invites comments on this policy that is under consideration. Comments may be submitted on any aspect of the policy being considered, including:

(A) If the Commission adopts the policy, are there certain circumstances that warrant flexibility in applying the policy?

(B) Whether, and to what extent, the Commission should consider a treasurer's ''best efforts'' to comply with the law.

(C) Whether and how to apply the prospective policy in its Administrative Fines program.

Dated: January 23, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–1790 Filed 1–27–04; 8:45 am]

BILLING CODE 6715–01–P

[11] For example, while Treasurer A is the treasurer for Joe Smith for Congress, a violation occurs that subjects A to official and individual liability. Treasurer A would be named in both his official and personal capacities. After the enforcement action has begun, Treasurer A resigns and Treasurer B takes over. The Commission should pursue Treasurer A in his individual capacity, and Treasurer B in her official capacity. If Treasurer B resigns and is succeeded by Treasurer C prior to the conclusion of the enforcement matter, the Commission should then continue to pursue Treasurer A in his individual capacity and pursue Treasurer C in her official capacity. Treasurer B is no longer named in her official capacity.

[12] A deeper examination of the court file indicates that—despite the *California Democratic Party* court's assertion to the contrary''the Commission never actually pled that the treasurer in this case was personally liable. Rather, the complaint references the treasurer ''as treasurer'' and the Commission's response to the treasurer's motion to dismiss indicates that the Commission was pursuing the treasurer ''in his official capacity.'' Compl., paragraphs 8, 58–59, Prayer paragraphs 1–5; Resp. to Def. Mot. to Dismiss, p. 21. However, the *California Democratic Party* court's result underscores the need for the Commission to delineate more clearly the capacity in which it pursues treasurers.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Pilot Program for Systematic Review of Commission Regulations; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of systematic review of current regulations.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is undertaking a pilot program to systematically review its current substantive regulations to ensure, to the maximum practical extent, consistency among them and with respect to accomplishing program goals. The pilot is currently expected to be completed by the end of calendar year 2004. Depending on the results of the pilot, the availability of personnel and fiscal resources, and other priorities for action, the Commission would then develop and implement an expanded systematic review process to address the remainder of its substantive regulations.

The primary purpose of the review is to assess the degree to which the regulations under review remain consistent with the Commission's program policies. In addition, each regulation will be examined with respect to the extent that it is current and relevant to CPSC program goals. Attention will also be given to whether the regulations can be streamlined, if possible, to minimize regulatory burdens, especially on small entities. To the degree consistent with other Commission priorities and subject to the availability of personnel and fiscal resources, specific regulatory or other projects may be undertaken in response to the results of this review.

In the initial, pilot phase of this program the following four regulations will be evaluated: safety standard for walk-behind power mowers, 16 CFR part 1205; requirements for electrically operated toys and other electrically operated articles intended for use by children, 16 CFR part 1505; standard for the flammability of vinyl plastic film, 16 CFR part 1611; and child-resistant packaging requirements for aspirin and methyl salicylate, 16 CFR 1700.14(a)(1) and 1700.14(a)(3), respectively.

The Commission solicits written comments from interested persons concerning the designated regulations' currentness and consistency with Commission policies and goals, and suggestions for streamlining where appropriate. In so doing, commenters are requested to specifically address how their suggestions for change could be accomplished within the various statutory frameworks for Commission action under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084, Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, Flammable Fabrics Act (FFA), 15 U.S.C. 1191–1204; and Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471–1476.

DATES: Written comments and submissions in response to this notice must be received by March 29, 2004.

ADDRESSES: Comments and other submissions should be captioned ''Pilot Regulatory Review Project'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments and other submissions may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: N.J. Scheers, PhD, Director, Office of Planning & Evaluation, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7670; e-mail *nscheers@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. The Pilot Review Program

The President's Office of Management and Budget has designed the Program Assessment Rating Tool (PART) to provide a consistent approach to rating programs across the Federal government. A description of the PART process and associated program evaluation materials is available online at: *http://www.whitehouse.gov/omb/budintegration/part_assessing2004.html.*

Based on an evaluation of the Commission's regulatory programs using the PART, the recommendation was made that CPSC develop a plan to systematically review its current regulations to ensure consistency among them in accomplishing program goals. The pilot review program launched with

this **Federal Register** notice is the initial step in implementing that recommendation.

B. The Regulations Undergoing Review

A summary of each of the regulations being reviewed in the pilot phase of this program is provided below. The full text of the regulations may be accessed at: *http://www.access.gpo.gov/nara/cfr/waisidx_03/16cfrv2_03.html.*

1. Walk-Behind Power Mowers

The safety standard for walk-behind power mowers appears at 16 CFR part 1205. It was promulgated in 1979. 44 FR 10024 (February 15, 1979). The standard prescribes safety requirements for certain walk-behind power lawnmowers, including labeling and performance requirements. The performance requirements apply to rotary mowers. The labeling requirements apply to both rotary and reel-type mowers. The standard is intended to reduce the risk of injury to consumers caused by contact, primarily of the foot and hand, with the rotating blade of the mower. The standard was issued under authority of the CPSA.

2. Electrically Operated Toys

The requirements for electrically operated toys and other electrically operated articles intended for use by children appear at 16 CFR part 1505. 38 FR 27032 (September 27, 1973). The regulation includes a number of requirements intended to reduce the risk of electrical, mechanical and/or thermal hazards. Part 1505 was promulgated under authority of the FHSA.

3. Standard for Flammability of Vinyl Plastic Film

The standard for flammability of vinyl plastic film appears at 16 CFR part 1611. It was codified at that location in 1975 under authority of the FFA. 40 FR 59894 (December 30, 1975). The standard was originally Commercial Standard 192–53, Flammability of General Purpose Vinyl Plastic Film, issued by the Department of Commerce, and later incorporated by Congress into the Flammable Fabrics Act of 1953. The standard establishes a minimum standard for the flammability of nonrigid, unsupported, vinyl plastic film including transparent, translucent, and opaque material, whether plain, embossed, molded or otherwise surface treated. Subpart A of part 1611 sets forth the standard. Subpart B contains the implementing regulations for the subpart A standard.

4. Salicylates

The Commission is reviewing two regulations that require child-resistant packaging for certain salicylate compounds. The first regulation, 16 CFR 1700.14(a)(1), requires child-resistant packaging for certain aspirin-containing oral drugs. The second, 16 CFR 1700.14(a)(3), requires child-resistant packaging for certain products containing methyl salicylate (oil of wintergreen). These regulations were promulgated under authority of the PPPA. The aspirin regulation was originally issued in 1972, 37 FR 3427 (February 16, 1972). The methyl salicylate regulation was also issued in 1972, 37 FR 6184 (March 25, 1972).

C. Possible Future Program

The Commission expects that, subject to the availability of personnel and fiscal resources and the priority of other needs for Commission action, it would apply the results of the pilot program to developing and implementing a systematic review process for the remainder of its substantive regulations. This could involve review of 19 regulations under the CPSA, 42 rules under the FHSA, 7 rules under the FHSA, and 31 rules under the PPPA. The CPSC rule under the Refrigerator Safety Act could also be a candidate for review.

D. Solicitation of Comments and Information

The Commission invites interested persons to submit comments on each of the regulations being reviewed in the pilot phase of this program. In particular, commenters are asked to address:

1. Whether the regulation is consistent with CPSC program goals.
2. Whether the regulation is consistent with other CPSC regulations.
3. Whether the regulation is current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards.
4. Whether the regulation can be streamlined to minimize regulatory burdens, particularly any such burdens on small entities.

For each regulation being reviewed in this pilot program, please provide any specific recommendations for change(s), if viewed as necessary, a justification for the recommended change(s), and, with respect to each suggested change, a statement of the way in which the change can be accomplished within the statutory framework of the CPSA, FHSA, FFA, or PPPA, as applicable.

Comments and other submissions should be captioned ''Pilot Regulatory Review Project'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments and other submissions may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

All comments and other submissions must be received by March 29, 2004.

Dated: January 22, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–1744 Filed 1–27–04; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7615–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Tyler Refrigeration Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Tyler Refrigeration Pit Superfund Site (Site) located in Smyrna, Delaware, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is found at appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of the Tyler Refrigeration Pit Site without prior notice of intent to delete because EPA views this as a noncontroversial deletion and anticipates no adverse comment. EPA

has explained its reasons for this deletion in the direct final notice of deletion. If EPA receives no adverse comment(s) on the direct final notice of deletion, EPA will not take further action. If EPA receives adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. EPA will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, *see* the Direct Final Notice of Deletion which is located in the ''Rules and Regulations'' section of this **Federal Register**.

DATES: Comments concerning this Site must be received by February 27, 2004.

ADDRESSES: Written comments should be addressed to: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168.

FOR FURTHER INFORMATION CONTACT: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3168 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the ''Rules and Regulations'' section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Delaware at the Delaware Department of Natural Resources and Environmental Control, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720, (302) 395–2600, Monday through Friday, 8 a.m. to 4 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: November 18, 2003.

Donald S. Welsh,

Regional Administrator, U.S. EPA Region III.

[FR Doc. 04–1822 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–1999–3705]

RIN 2127–AG16

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

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

ACTION: Termination of rulemaking.

SUMMARY: On August 25, 1995, the National Highway Traffic Safety Administration (NHTSA) received a petition for rulemaking from Independent Mobility Systems (IMS) requesting that the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 206, ''Door Locks and Door Retention Components,'' be modified to exclude retention components on doors modified for use with wheelchair ramp systems. NHTSA granted the IMS petition on May 31, 1996. This notice discusses our decision to terminate rulemaking on this petition.

FOR FURTHER INFORMATION CONTACT: The following persons may be contacted at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For Technical Issues: Mr. Maurice Hicks, Office of Crashworthiness Standards, NVS–113, telephone (202) 366–6345, facsimile (202) 366–4329, electronic mail: *maurice.hicks@nhtsa.dot.gov.*

For Legal Issues: Ms. Rebecca MacPherson, Office of the Chief Counsel (202) 366–2992, facsimile (202) 366–2260, electronic mail: *rebecca.macpherson@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (*e.g.*, the August 25, 1995, IMS petition and subsequent rulemaking notices) by going to the Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (*http://dms.dot.gov/*).

(2) On that page, click on ''search'' near the top of the page or scroll down to the words ''Search the DMS Web'' and click on them.

(3) On the next page (*http://dms.dot.gov/search/*), scroll down to ''Docket Number'' and type in the four-digit docket number shown in the title at the beginning of this notice. After typing the docket number, click on ''search.''

(4) On the next page (''Docket Summary Information''), which contains docket summary information for the materials in the docket you selected, scroll down to ''search results'' and click on the desired materials. You may download the materials.

Background

NHTSA received a petition for rulemaking from Independent Mobility System (IMS), Inc., (4100 W. Piedras Street, Farmington, New Mexico 87401) on August 25, 1995, requesting an exemption from the requirements of FMVSS No. 206 for retention components on any door modified for use with a wheelchair ramp system. IMS claimed that exempting wheelchair ramps was necessary to aid in transporting disabled persons. It justified its request on the basis that wheelchair ramps share the same purpose and configuration as wheelchair lifts, which are exempted from the standard. The petitioner stated that, as with lifts, wheelchair ramp platforms are vertically stored within the vehicle's doorway, with the purpose of creating a barrier to prevent occupant ejections.

IMS requested an inclusion of the term ''wheelchair ramp'' along with ''wheelchair lifts'' in paragraph S4 of FMVSS 206. IMS asked that paragraph S4 be revised as follows:

> S4. (c) Components on any side door leading directly into a compartment that contains one or more seating accommodations shall conform to this standard. However, components on folding doors, roll-up doors, doors that are designed to be easily attached to or removed from motor vehicles manufactured for operation without doors, and any side doors which are equipped with wheelchair lifts *or wheelchair ramps* and that are linked to an alarm system consisting of either a flashing visible signal located in the driver's compartment or an alarm audible to the driver that is activated when the door is open, need not conform to this standard.

On May 31, 1996, NHTSA issued a **Federal Register** notice granting the IMS petition (61 FR 27325).

Reason for Termination

Subsequent to granting the IMS petition, the agency further investigated the installation and operational characteristics of various wheelchair lift and ramp designs. From this, it was found that: (1) wheelchair ramps do not adequately barricade the vehicle doorway to prevent occupant ejection without functional door latches, and (2) since 1998, wheelchair ramp designs have progressed such that it is no longer necessary to disable door retention components when installing wheelchair ramp and lift systems. Therefore, NHTSA is terminating the rulemaking that arose out of the August 1995, IMS petition.

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

Issued on: January 22, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–1645 Filed 1–27–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040113013–4013–01; I.D. 122403A]

RIN 0648–AR84

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Fishing Restrictions, Seasonal Area Closure, Limit on Swordfish Fishing Effort, Gear Restrictions, and Other Sea Turtle Take Mitigation Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, NMFS issues this proposed rule that would establish a number of conservation and management measures for the pelagic fisheries of the western Pacific managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This proposed rule is intended to achieve certain objectives of the FMP, particularly achieving optimum yield for FMP-managed species, promoting domestic harvest and domestic values associated with FMP-managed species, and promoting domestic marketing of FMP-managed species in America Samoa, the Commonwealth of the Mariana Islands, Guam, and Hawaii, while avoiding the likelihood of jeopardizing the continued existence of any species listed as endangered or threatened under the Endangered Species Act (ESA). Species of particular concern include the green, hawksbill, leatherback, loggerhead, and olive ridley sea turtles, all of which have been found to interact with, and be affected by, the pelagic fisheries of the western Pacific region.

This proposed rule would eliminate the prohibition on longline fishing by vessels registered under the FMP for use under Hawaii longline limited access permits (''Hawaii-based longline vessels'') and vessels registered for use under longline general permits (''general longline vessels'') during April and May in certain waters south of the Hawaiian Islands; eliminate the prohibition on Hawaii-based longline vessels and general longline vessels using longline gear to target swordfish (''shallow-setting'') north of the equator; establish an annual limit on the number of shallow-sets that may be conducted north of the equator by the Hawaii-based longline fleet; divide and distribute this effort limit each calendar year in equal portions to interested holders of Hawaii longline limited access permits; require the use of circle hooks sized 18/0 or larger with a 10–degree offset and mackerel-type bait by Hawaii-based longline vessels shallow-setting north of the equator; establish annual limits on the numbers of fishery interactions with leatherback and loggerhead sea turtles; require that the longline-setting procedure be performed during the nighttime when shallow-setting north of 23° N. lat.; require that operators of Hawaii-based longline vessels carry and use NMFS-approved de-hooking devices; eliminate the requirement that operators of general longline vessels annually complete a protected species workshop; eliminate the requirement that general longline vessels and other pelagic fishing vessels using hook-and-line gear employ specified sea turtle handling measures; and eliminate the requirement that certain vessels may be re-registered to Hawaii longline limited access permits only during the month of October.

DATES: Comments must be received in writing by February 27, 2004.

ADDRESSES: Written comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA) should be mailed to Dr. Samuel Pooley, Acting Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; or faxed to 808–973–2941. Written comments will not be accepted if submitted via e-mail or the Internet. Written comments regarding the burden hour estimates or any other aspects of the collection of information requirements contained in this proposed rule may be submitted by mail to NMFS (see **ADDRESSES**) and to OMB by e-mail at *David_Rostker@omb.eop.gov* or faxed to 202–395–7285. Copies of the Draft Supplemental Environmental Impact Statement (DSEIS), Regulatory Impact Review (RIR), and IRFA prepared for this action, as well as the Final Environmental Impact Statement (FEIS) that was prepared for the fisheries managed under the FMP and issued by NMFS on March 30, 2001, may be obtained from Dr. Samuel Pooley at the address above. Requests for such copies should indicate whether a paper copy or electronic copy on CD is preferred. Copies of the FEIS, DSEIS, IRFA, and RIR are also available on the Internet at the website of PIRO, *http://swr.nmfs.noaa.gov/pir/*. The DSEIS, IRFA, and RIR are also available at the website of the Western Pacific Fishery Management Council, *http://www.wpcouncil.org/*.

FOR FURTHER INFORMATION CONTACT: Tom Graham, Fishery Management Specialist, PIRO, at 808–973–2937.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2001, NMFS issued a biological opinion under the ESA for the pelagic fisheries of the western Pacific region. The biological opinion included a reasonable and prudent alternative designed to avoid the likelihood of jeopardizing the continued existence of green, leatherback, and loggerhead sea turtles. The requirements of the reasonable and prudent alternative were implemented on an interim basis through an Order issued on March 30, 2001, by the United States District Court for the District of Hawaii in *Center for Marine Conservation* v. *NMFS* and a subsequent emergency interim rule made effective June 12, 2001 (66 FR 31561), and extended on December 10, 2001 (66 FR 63630). The requirements were implemented on a permanent basis through a final rule published June 12, 2002 (67 FR 40232).

The June 12, 2002, rule prohibits: (1) swordfish-directed fishing by Hawaii-based longline vessels and general longline vessels north of the equator, (2) fishing by Hawaii-based longline vessels and general longline vessels in certain

waters south of the Hawaiian Islands (between the equator and 15° N. lat., and between 145° W. long. and 180° long.), and (3) the landing or possessing of more than 10 swordfish per fishing trip by Hawaii-based longline vessels and general longline vessels fishing north of the equator. The rule allows the re-registration of vessels to Hawaii longline limited access permits only during the month of October; requires all longline vessel operators to annually attend a protected species workshop; and requires Hawaii-based longline vessels, general longline vessels, and non-longline pelagic vessels using hook-and-line gear to use specified sea turtle handling and resuscitation measures.

On December 12, 2001, NMFS reinitiated ESA section 7 consultation on the FMP, based on the reasonable and prudent alternative in the March 29, 2001, biological opinion and new information that could improve NMFS' ability to quantify and evaluate the effects of the FMP-managed fisheries on listed sea turtle populations. At the conclusion of the consultation, on November 15, 2002, NMFS issued a new biological opinion specifying that continued authorization of pelagic fisheries in the western Pacific region under the FMP is not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

On August 31, 2003, the Memorandum Opinion issued in *Hawaii Longline Association* v. *NMFS* (D.D.C., Civ. No. 01–0765) invalidated the November 15, 2002, biological opinion and the June 12, 2002, final rule (67 FR 40232). On October 6, 2003, the Court stayed the August 31, 2003, Order and reinstated the biological opinion and regulations until April 1, 2004.

In June 2003, at its 118th meeting, the Western Pacific Fishery Management Council (Council) began considering recommendations for new measures for the FMP-managed fisheries, focusing on potential modifications to existing measures aimed at minimizing sea turtle interactions in the FMP-managed longline fisheries.

On October 17, 2003, NMFS published a notice of intent (68 FR 59771) to prepare a supplemental environmental impact statement (SEIS) in accordance with the National Environmental Policy Act of 1969 (NEPA). The SEIS would re-examine the management measures currently in place to minimize interactions between the Hawaii-based longline fishery and protected species, as well as other management issues and options raised during the public scoping process. The notice also advised that the Court orders would eliminate existing measures designed to avoid the likelihood that FMP-managed fisheries would jeopardize the continued existence of listed species of sea turtles, and that NMFS and the Council were, therefore, considering management measures to protect sea turtles.

On December 3, 2003, NMFS published a supplemental notice of intent (68 FR 67640) regarding the SEIS. This notice furnished additional information on the need for expedited management action on proposed management measures related to the Hawaii-based longline fishery and its potential impact on ESA-listed sea turtles. The accelerated management action schedule is necessary to avoid a lapse in sea turtle conservation measures after the June 12, 2002, final rule is vacated on April 1, 2004.

The supplemental notice (68 FR 67640) also announced the Council's and NMFS' intent to apply alternative procedures approved by the Council on Environmental Quality (CEQ) to facilitate completion of the SEIS on the proposed management measures for the Hawaii-based longline fishery so that necessary turtle conservation rules could be effective by April 1, 2004. The supplemental notice advised that a subsequent phase of the SEIS would be prepared to address other management issues identified in the initial notice of intent (68 FR 59771) and during the subsequent public scoping process. The supplemental notice confirmed the initial scoping meeting schedule and effectiveness of the public input opportunity through December 15, 2003. The Council and NMFS also solicited, recorded, and considered input on issues and possible action options and alternatives received during public Council meetings and public meetings of the Council's Sea Turtle Conservation Special Advisory Committee, which was formed in September 2003.

This proposed rule was developed in response to the urgent need to provide adequate protections for sea turtles and to the promising results of recent research in the Atlantic Ocean on mitigation technologies for sea turtle interactions. The research has identified combinations of hook and bait types with potential to substantially reduce interaction rates in swordfish-directed longline fishing and the adverse impacts of such interactions. Although these combinations have not been tested in Pacific Ocean fisheries, the affected sea turtle species are the same in the Pacific and Atlantic so the positive experimental results obtained in the Atlantic are expected to be largely replicated if the hook and bait combinations are applied in commercial fisheries in the western Pacific region. The relatively low sea turtle interaction rates expected from these hook and bait types, combined with other mitigation and safeguard measures, would allow the current restrictions on shallow-setting and deep-setting (tuna-targeting) to be eased, enhancing the ability to achieve the objectives of the FMP, particularly the objectives to achieve optimum yield for FMP-managed species, promote domestic harvest and domestic values associated with FMP-managed species, and promote domestic marketing of FMP-managed species in America Samoa, the Commonwealth of the Mariana Islands, Guam, and Hawaii.

This proposed rule would allow shallow-setting to occur at about one half the average annual level of effort during the 1994–1998 period, facilitating the generation of economic benefits in that component of the fishery. This proposed rule would also give the longline fleet year-round access to yellowfin and bigeye tuna stocks in the area currently closed to longline fishing during April and May.

At its 121st meeting, on November 25, 2003, the Council made a recommendation for management action. This proposed rule would implement both the Council's recommended action and the court ruling of August 31, 2003 (vacating the rule published June 12, 2002).

Management Measures to be Eliminated by Court Ruling

The Court ruling will on April 1, 2004, eliminate: (1) The prohibition on Hawaii-based longline vessels and general longline vessels using longline gear to fish for swordfish north of the equator (as well as several restrictions intended to make this prohibition enforceable, including restrictions on gear configuration, set depth, and the number of swordfish possessed and landed); (2) the prohibition on longline fishing by Hawaii-based vessels and general longline vessels during April and May in certain waters south of the Hawaiian Islands (between the equator and 15° N. lat., and between 145° W. long. and 180° long.); (3) the requirement that operators of general longline vessels annually complete a protected species workshop and have on board a valid protected species workshop certificate; (4) the requirement that owners and operators of general longline vessels and of other vessels using hooks to target Pacific pelagic species employ specified sea turtle handling measures (the handling

measures, which vary among vessel type, include carrying and using line clippers, dip nets, and wire or bolt cutters to disengage sea turtles, and handling, resuscitating, and releasing sea turtles in specified manners); and (5) the requirement that any vessel de-registered from a Hawaii longline limited access permit after March 29, 2001, may only be re-registered to a Hawaii longline limited access permit during the month of October.

Proposed Management Measures

The Council's proposed action would: (1) Establish an annual limit on the amount of shallow-set longline fishing effort north of the equator that may be collectively exerted by Hawaii-based longline vessels (set at 2,120 shallow-sets per year); (2) divide and distribute this shallow-set effort limit each calendar year in equal portions (in the form of transferable single-set certificates valid for a single calendar year) to all holders of Hawaii longline limited access permits that respond positively to an annual solicitation of interest from NMFS; (3) prohibit any Hawaii-based longline vessel from making more shallow-sets north of the equator during a trip than the number of valid shallow-set certificates on board the vessel; (4) require that operators of Hawaii-based longline vessels submit to the Regional Administrator within 72 hours of each landing of pelagic management unit species one valid shallow-set certificate for every shallow-set made north of the equator during the trip; (5) require that Hawaii-based longline vessels, when making shallow-sets north of the equator, use only circle hooks sized 18/0 or larger with a 10–degree offset; (6) require that Hawaii-based longline vessels, when making shallow-sets north of the equator, use only mackerel-type bait; (7) establish annual limits on the numbers of interactions between leatherback and loggerhead sea turtles and Hawaii-based longline vessels while engaged in shallow-setting (set equal to the annual estimated incidental take for the respective species in the shallow-set component of the Hawaii-based fishery, as established in the prevailing biological opinion issued by NMFS pursuant to section 7 of the ESA); (8) establish a procedure for closing the shallow-setting component of the Hawaii-based longline fishery for the remainder of the calendar year when either of the two limits is reached, after giving 1 week advanced notice of such closure to all holders of Hawaii longline limited access permits (the numbers of interactions will be monitored with respect to the limits using year-to-date estimates derived from data recorded by NMFS vessel observers); (9) require that operators of Hawaii-based longline vessels notify the Regional Administrator (as defined at 50 CFR 660.236) in advance of every trip whether the longline sets made during the trip will involve shallow-setting or deep-setting and require that Hawaii-based longline vessels make sets only of the type declared (i.e., shallow-sets or deep-sets); (10) require that operators of Hawaii-based longline vessels carry and use NMFS-approved de-hooking devices; and (11) require that Hawaii-based longline vessels, when making shallow-sets north of 23° N. lat., start and complete the line-setting procedure during the nighttime (specifically, no earlier than one hour after local sunset and no later than local sunrise).

These proposed management measures would replace the existing restrictions on longlining north of the equator, which will be eliminated on April 1, 2004, by the Court ruling. Certain measures that will be eliminated by the Court ruling would not be reinstated under the proposed rule. Specifically, the proposed restrictions related to shallow-setting would apply only to Hawaii-based longline vessels, not general longline vessels; Hawaii-based longline vessels and general longline vessels would no longer be prohibited from longlining during April and May in certain waters south of the Hawaiian Islands; operators of general longline vessels would no longer be required to annually complete a protected species workshop; operators of general longline vessels and of other vessels using hooks to target Pacific pelagic species would no longer be required to employ specified sea turtle handling measures; and the period during which vessels de-registered from a Hawaii longline limited access permit after March 29, 2001, would be allowed to be re-registered to Hawaii longline limited access permits would no longer be limited to the month of October.

These measures that would be eliminated were intended to minimize adverse impacts on certain species of sea turtles. The Council's proposed action would not reinstate them because the Council found they are not needed to achieve the objectives of the action, provided that the measures proposed in items (1) through (10) of the above list of proposed measures are implemented. The Council found that it is unlikely that general longline vessels would engage in shallow-setting north of the equator (which would be unrestricted under the proposed rule), primarily due to their being prohibited from longlining in the EEZ around Hawaii and from landing fish in Hawaii.

The Council's findings with respect to achieving the objectives of the action were predicated on certain off-site sea turtle conservation projects being undertaken. These projects, which are not part of this proposed rule, would be aimed at protecting affected sea turtle populations on their nesting beaches and in their nearshore foraging grounds at sites outside of the United States. The sites include a nesting beach in Papua, coastal foraging grounds in western Papua, nesting beaches in Papua New Guinea, the fishing grounds of the halibut gillnet fishery in Baja California, Mexico, and nesting beaches in Japan. The projects would be undertaken by non-governmental organizations under contract with the Council and/or NMFS. In assessing the likely impacts of its proposed action, the Council considered these projects in conjunction with the regulatory elements of the proposed action.

This proposed rule focuses on managing the Hawaii-based longline fishery with respect to listed sea turtle species. The Council intends to continue to consider management actions that might be needed for the other FMP-managed fisheries, including other longline fisheries and troll and handline fisheries.

The proposed requirement to set longline gear only during the nighttime while shallow-setting north of 23° N. lat. is intended to minimize interactions with seabirds. It would put the FMP in compliance with the terms and conditions contained in a biological opinion issued on November 28, 2000, and amended on November 18, 2002, by the U.S. Fish and Wildlife Service, which are intended to conserve endangered short-tailed albatross.

Expected Effects of Proposed Rule on Sea Turtles

The rates of sea turtle interactions and mortalities in the Hawaii-based longline fishery resulting from the proposed rule would likely be substantially lower than those under the management regime in place in 1999, prior to the imposition of restrictions on swordfish-directed fishing and the April-May area closure (the regime to which the fishery will revert on April 1, 2004, if management action is not taken before then), and higher than the expected rates under the current management regime. During the 1994–1998 period, which represents an appropriate baseline for the no-action scenario, the estimated annual average numbers of interactions were as follows: leatherback, 112; loggerhead, 418; green, 40; and olive ridley, 146. Under the

proposed rule, the expected numbers of annual average interactions are as follows: leatherback, 35; loggerhead, 21; green, 7; and olive ridley, 42. Under the current management regime, the expected numbers of annual average interactions are as follows: leatherback, 6; loggerhead, 19; green, 3; and olive ridley, 31. The projected sea turtle mortality rates, which are subsets of the interaction rates, are more uncertain than the projected interaction rates because of the difficulty in estimating the numbers of turtles that ultimately die as a result of injuries incurred in interactions with fishing gear.

The projected interaction and mortality rates under the proposed rule are uncertain in part because they are based on research findings regarding the efficacy of a hook-and-bait combination that has not been thoroughly tested in commercial fisheries in the Pacific Ocean.

The proposed hook-and-bait combination (18/0–sized circle hooks with 10–degree offset in combination with mackerel-type bait) is one of a number of gear configurations tested in experiments conducted by NMFS in the Western Atlantic Ocean during the last 3 years. The results available to date indicate substantially reduced sea turtle interaction rates compared with the J-hooks and squid bait that are conventionally used to target swordfish and that served as the experimental controls. In the experiments, the use of the proposed hook-and-bait combination resulted in an average reduction of 92 percent in interactions with loggerhead sea turtles, an average reduction of 67 percent in interactions with leatherback sea turtles, an average increase of 30 percent in swordfish catch, by weight, and an average reduction of 81 percent in bigeye tuna catch, by weight.

Under the proposed rule there is a possibility that greater effective fishing effort per set could increase relative to the no-action scenario (as could the rate of sea turtle interactions per set), since fishermen would have an incentive to fish their limited available sets to maximize harvest levels. This effect, however, as well as the uncertainty of the efficacy of the hook and bait requirements, is unlikely to pose substantial risk to affected sea turtles populations because of the imposition of the annual limits on interactions with leatherbacks and loggerheads in the shallow-set component of the Hawaii-based longline fishery. Further, the requirement that vessel operators use NMFS-approved de-hooking devices is expected to reduce the number of mortalities per interaction.

In addition to direct effects on sea turtles stemming from interactions with longline gear, the proposed rule might also have indirect effects. These include effects stemming from shifts in the production of swordfish and tuna between the U.S.-regulated fisheries and those of other countries and the effects of the Hawaii-based longline fishery serving as a model for sea turtle mitigation techniques that the fleets of other countries can adopt. Effects in both these categories are likely to be positive with respect to populations of affected sea turtles.

This proposed rule has been recommended by the Council. The impacts of this proposed rule with respect to the likelihood of jeopardizing the continued existence of affected species of sea turtles will be assessed by NMFS in the process of the ESA section 7 consultation for the FMP-managed fisheries, which is currently underway. The rule might be revised, as necessary, to comport with the reasonable and prudent alternative, if any, of the biological opinion that is issued as a result of that consultation. If such restrictions exceed the scope of this proposed rule, NMFS will initiate a second round of notice and comment.

NMFS seeks comment on the de-hooking devices that should be required to be carried and used on Hawaii-based longline vessels, including specific minimum design standards, specific required methods of use, and the possibility of requiring that several types of de-hooking devices and related equipment be carried and used, depending on the circumstances. NMFS also seeks comment on more specific definitions or minimum design standards for circle hooks and mackerel-type bait that should be required when shallow-setting north of the equator.

Classification

The Council and NMFS prepared a draft supplemental environmental impact statement (DSEIS) for this regulatory amendment. While a notice of availability has not yet been published, the DSEIS is scheduled to be filed with the Environmental Protection Agency and distributed in mid-January 2004 for an abbreviated (30–day) comment period as approved by CEQ.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of why action is being considered, the objectives and legal basis for the action, and a description of the action, including its reporting, recordkeeping, and other compliance requirements, are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows:

Number of Affected Small Entities

The proposed rule would apply to all holders of Hawaii longline limited access permits and all holders of longline general permits. The number of Hawaii longline limited access permit holders is 164. Not all such permits are renewed and used every year (approximately 126 were renewed in 2003). Most holders of Hawaii longline limited access permits are based in, or operate out of, Hawaii. Longline general permits are not limited by number. Approximately 67 longline general permits were issued in 2003. In 2003 all but two holders of longline general permits were based in, or operated out of, American Samoa. The remaining two were based in the Northern Mariana Islands.

In a few cases multiple permits are held by a single business, so the number of businesses to whom the rule would apply is slightly smaller than the number of permit holders. All holders of Hawaii longline limited access permits and longline general permits are believed to be small entities (i.e., they are businesses that are independently owned and operated, not dominant in their field, and have no more than $3.5 million in annual receipts). Therefore, the number of small entities to which the rule would apply is approximately 230.

Duplicating, Overlapping, and Conflicting Federal Rules

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Alternatives to the Proposed Rule

A number of alternatives to the proposed rule were considered. Described below are the alternatives and why they were not chosen.

The alternatives included two variations on the seasonal area longline closure, including one that would retain the current April-May closure in certain waters south of the Hawaiian Islands and one that would retain the current April-May closure with the exception of the EEZ waters around Palmyra Atoll (the proposed rule would eliminate the current April-May area closure). The alternatives were rejected because they would unnecessarily constrain the fishing activities and economic performance of holders of longline

general permits and Hawaii longline limited access permits; adverse impacts to sea turtles could be adequately mitigated through other elements of the preferred alternative without having to restrict longline fishing activity by period or area.

The alternatives included five variations on the amount of shallow-setting longline effort north of the equator that would be allowed by Hawaii-based vessels. The levels of shallow-setting effort considered were zero, 1,060 sets per year, 3,179 sets per year, and unlimited, as well as one alternative that would allow only a one-time trial of 1,560 sets (the proposed rule would limit shallow-setting effort at 2,120 sets, about 50 percent of the 1994–1998 annual average level). The selection among alternatives was based on their expected impacts on sea turtles (sea turtle interactions and mortalities are expected to be strongly correlated with the amount of fishing effort) versus their expected impacts on the economic performance of the Hawaii-based longline fishery (economic benefits are expected to be strongly correlated with the amount of fishing effort). The alternatives allowing shallow-setting at levels greater than 50 percent of the 1994–1998 annual average were rejected because they might fail to keep impacts on sea turtles below those required in the biological opinion's incidental take statement. The alternatives allowing shallow-setting at levels less than 50 percent of the 1994–1998 annual average were rejected because they would unnecessarily constrain the fishing activities and economic performance of Hawaii-based longline vessels; adverse impacts to sea turtles could be adequately mitigated through other elements of the preferred alternative without having to restrict shallow-setting to the degree proposed under the rejected alternatives.

The alternatives included several variations on how the allowable level of shallow-setting effort north of the equator would be allocated among holders of Hawaii longline limited access permits. Variations included allocating the available effort by lottery, allocating it equally among all permit holders, allocating it in proportion to the permit holders' historical shallow-setting effort, and not allocating the effort in any particular way, in which case the fishery would be closed each year once the fleet-wide limit is reached (the proposed rule would divide and distribute the limit equally among all interested permit holders in the form of transferable shallow-set certificates). The lottery variation was rejected because it would impose a substantial amount of uncertainty on fishermen and might be considered inequitable by some fishermen. The equal-distribution variation was rejected because it would give each permit holder too few shallow sets to be able to make it worth investing and participating in the shallow-set component of the fishery, thereby constraining the economic performance of that component. The variation of allocating effort in proportion to the permit holders' historical shallow-setting effort was rejected because it would be excessively costly to implement and because of the contention likely to be generated with respect to the documentation and determination of individuals' historical fishing effort. The fleet-wide limit variation was rejected because it would create an incentive for each permit holder to do as much shallow-setting as possible before the fishery is closed, thereby encouraging fishermen to shallow-set under what would otherwise be sub-optimal conditions (in terms of both economic performance and safety).

The alternatives included two variations on the sea turtle interaction limit(s), including no limit and a limit for every species for which there is an Incidental Take Statement issued under the ESA (the proposed rule would close the shallow-set component of the fishery if either of two calendar-year interaction limits is reached, one for leatherback sea turtles and one for loggerhead sea turtles; the limits would be set equal to the annual estimated incidental take for the respective species in the shallow-set component of the Hawaii-based fishery, as established in the prevailing biological opinion issued by NMFS pursuant to section 7 of the ESA). The no-limit variation was rejected because it might fail to adequately minimize adverse impacts on sea turtles. The variation of establishing limits for all affected species was rejected because it would likely result in the shallow-set component of the fishery being closed more often than is needed to adequately mitigate adverse impacts on sea turtles.

Effects of the Proposed Rule on Small Entities

The proposed rule is expected to have positive overall economic impacts on the small entities to whom the proposed rule would apply, all of which are individuals and businesses that hold permits for, and participate in, the western Pacific pelagic longline fisheries. These positive impacts would stem from the relaxation of the current restrictions on longlining, including the elimination of the April-May area closure for longlining and the elimination of the prohibition on shallow-setting north of the equator, thereby providing new fishing opportunities and potential economic benefits. These benefits would be very slightly offset by the need to acquire and use NMFS-approved de-hooking devices.

Holders of Hawaii longline limited access permits that choose not to engage in shallow-setting are likely to further benefit each year by being able to sell their share of shallow-set certificates to other permit holders.

Holders of Hawaii longline limited access permits that choose to engage in shallow-setting are likely to benefit from the required hook-and-bait combination, as it has been found in experiments in the Atlantic Ocean to result in higher catch rates of swordfish relative to conventionally used hook and bait types. These permit holders would also be subject to new costs, which would partly offset the new benefits available from shallow-setting. These include the costs of acquiring an adequate number of shallow-set certificates each year and acquiring and using circle hooks sized 18/0 or larger, with 10–degree offset. There would also be very minor new costs associated with the requirement to notify NMFS each year if they are interested in receiving shallow-set certificates and with the requirement to submit shallow-set certificates to NMFS after each trip. There may also be new costs (relative to the costs associated with conventional practices) associated with the need to use only mackerel-type bait and to conduct the line-setting procedure during the nighttime hours.

Holders of longline general permits would have the opportunity to engage in unrestricted shallow-setting north of the equator, but because general longline vessels are not allowed to fish in the EEZ around Hawaii or land fish in Hawaii, it is unlikely to be a cost-effective option and thus unlikely to yield new economic benefits to fishery participants.

The proposed rule is likely to positively impact small businesses in addition to those to which the rule would apply. These include Hawaii-based businesses that supply goods and services to fishing operations, as fishing activities would expand, and seafood wholesalers and retailers, as the proposed rule is expected to lead to increased landings of swordfish and a more regular supply of tuna.

A copy of the IRFA is available from NMFS (see **ADDRESSES**).

This proposed rule contains two collection-of-information requirements subject to review and approval by the

Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). These requirements have been submitted to the OMB for approval. The first would require that holders of Hawaii longline limited access permits respond to annual requests from NMFS if they are interested in receiving shares of the annual limit on longline shallow-sets (in the form of shallow-set certificates). The second would require that holders of Hawaii longline limited access permits or their agents notify the Regional Administrator prior to each fishing trip whether longline shallow-sets or deep-sets will be made during the trip. The public reporting burden for the first collection-of-information requirement is estimated to average ten minutes per response, and for the second requirement, four minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB by e-mail at *David_Rostker@omb.eop.gov* or faxed to 202–395–7285. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

In a biological opinion dated November 15, 2002, NMFS determined that fishing activities conducted under the FMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Under rulings made by the U.S. District Court for the District of Columbia on August 31, 2003, and October 6, 2003 (*Hawaii Longline Association* v. *NMFS*), the biological opinion of November 15, 2002, will be vacated on April 1, 2004. In response to the impending vacatur of the biological opinion and to analyze the management measures in this proposed rule, a request to reinitiate formal consultation was made by the NMFS Pacific Islands Region, Office of Sustainable Fisheries, to the NMFS Office of Protected Resources on December 11, 2003.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: January 23, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definition of ''Pelagics FMP'' is revised and new definitions for ''Deep-set or Deep-setting'', ''Shallow-set or Shallow-setting'', and ''Shallow-set certificate'', are added alphabetically to read as follows:

§ 660.12 Definitions.

* * * * *

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (*Xiphias gladius*) at any time during a given trip. As used in this definition ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any flourescent ''glow bead'', chemical, or electrically powered light that is affixed underwater to the longline gear.

* * * * *

Pelagics FMP means the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

* * * * *

Shallow-set or Shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

* * * * *

§ 660.21 [Removed]

3. In § 660.21, paragraphs (m) and (n) are removed.

4. In § 660.22, paragraph (hh) is added, paragraphs (ff), (gg), (jj), (kk), (ll), (mm), (nn), (oo), (pp), (qq), (rr), and (ss) are revised, and paragraph (tt) is removed and reserved, to read as follows:

§ 660.22 Prohibitions.

* * * * *

(ff) Own or operate a vessel registered for use under a Hawaii longline limited access permit and fail to attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species in violation of § 660.34(a).

(gg) Operate a vessel registered for use under a Hawaii longline limited access permit without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34(d).

(hh) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to the Regional Adminstrator pursuant to § 660.23(a), in violation of § 660.33(h).

* * * * *

(jj) Fail to carry and use a line clipper, dip net, dehooker, and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(a).

(kk) Engage in shallow-setting without a valid shallow-set certificate for each shallow-set made in violation of § 660.33(c).

(ll) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(mm) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(b), (c), or (d).

(nn) Engage in the line-setting process from a vessel registered for use under a Hawaii limited access longline permit while shallow-setting north of 23° N. lat. during daylight hours in violation of § 660.35(a)(10).

(oo) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(pp) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait in violation of § 660.33(g).

(qq) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(3)(ii), in violation of § 660.33(i).

(rr) Have on board a vessel registered for use under a Hawaii longline limited access permit, at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, float lines less than 20 meters in length or light sticks, in violation of § 660.33(d).

(ss) Transfer a shallow-set certificate to a person other than a holder of a Hawaii longline limited access permit in violation of § 660.33(e).

(tt) [Reserved]

* * * * *

5. In § 660.23, paragraph (a) is revised to read as follows:

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, trip type (either deep-setting or shallow-setting), the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

* * * * *

6. In § 660.32, paragraph (a)(1) is revised, paragraphs (a)(2) and (a)(3) are removed, paragraphs (a)(4) and (a)(5) are redesignated as paragraphs (a)(2) and (a)(3), respectively, and new paragraph (a)(4) is added, to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) * * *

(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(2) of this section, dip nets meeting the minimum standards prescribed in paragraph (a)(3) of this section, dehookers meeting the minimum design standards prescribed in paragraph (a)(4) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hooks as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

(4) *Dehookers.* Dehookers are devices intended to remove embedded hooks from sea turtles and other animals in a manner that minimizes injury and trauma to the animals. The minimum design standards are that the device or devices can be used to grasp or engage a hook embedded in a sea turtle or other animal on board the vessel or in the water alongside the vessel and remove the hook with little injury or trauma to the animal.

* * * * *

7. Section 660.33 is revised to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

(a) *Limit on shallow-setting by Hawaii longline vessels.*

(1) A maximum annual limit of 2,120 is established on the number of shallow-set certificates that will be made available each calendar year to vessels registered for use under Hawaii longline limited access permits.

(2) The Regional Administrator will divide the 2,120–set limit each calendar year into equal shares such that each holder of a Hawaii longline limited access permit who provides notice of interest to the Regional Administrator no later than November 1 prior to the start of the calendar year, pursuant to paragraph (a)(3) of this section, receives a share. If such division would result in shares containing a fraction of a set, the limit will be adjusted downward such that each share consists of a whole number of sets.

(3) Any permit holder who provides notice according to this paragraph is eligible to receive shallow-set certificates. In order to be eligible to receive shallow-set certificates for a given calendar year, holders of Hawaii longline limited access permits must provide written notice to the Regional Administrator of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year, except for 2004, the notification deadline for which is May 1, 2004.

(4) No later than June 1, 2004, and in every year subsequent, no later than December 1, the Regional Administrator will send shallow-set certificates valid for the upcoming calendar year to all holders of Hawaii longline limited access permits that provided notice of interest to the Regional Administrator pursuant to paragraph (a)(3) of this section.

(b) *Limits on sea turtle interactions.* (1) Maximum annual limits are established on the numbers of physical interactions that occur each calendar year between vessels registered for use under Hawaii longline limited access permits while shallow-setting and:

(i) Leatherback sea turtles (*Dermochelys coriacea*); and

(ii) Loggerhead sea turtles (*Caretta caretta*).

(2) The two sea turtle interaction limits are set equal to the Annual Estimated Incidental Takes for the respective species in the shallow-setting component of the Hawaii-based longline fishery, as indicated in the latest Incidental Take Statement issued by NMFS in association with a Biological Opinion pursuant to section 7 of the Endangered Species Act.

(3) Upon determination by the Regional Administrator that, based on data from NMFS observers, either of the two interaction limits has been reached during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the limit having been reached. The notification will include an advisement that the shallow-set component of the longline

fishery shall be closed and shallow-setting north of the equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, not earlier than 7 days after the date of filing of the notification of the closure for public inspection at the Office of the Federal Register, until the end of the calendar year in which the limit was reached. Coincidental with the filing of the notification of the limit having been reached at the Office of the Federal Register, the Regional Administrator will also provide notice that the shallow-set component of the longline fishery shall be closed and shallow-setting north of the equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, not earlier than 7 days after the date of filing of a notification of the closure for public inspection at the Office of the Federal Register, to all holders of Hawaii longline limited access permits via electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated in the notification published in the **Federal Register** under paragraph (b)(3)(i) of this section until the end of the calendar year in which the limit was reached, the shallow-set component of the longline fishery shall be closed.

(c) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may engage in shallow-setting north of the equator (0° lat.) providing that there is on board one valid shallow-set certificate for every shallow-set that is made during the trip. For each shallow-set made north of the equator (0° lat.) vessel operators must submit one valid shallow-set certificate to the Regional Administrator. The certificate must be attached to the original logbook form that corresponds to the shallow-set and that is submitted to the Regional Administrator within 72 hours of each landing of management unit species as required under § 660.14.

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any flourescent ''glow bead'', chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) Shallow-set certificates may be transferred only to holders of Hawaii longline limited access permits.

(f) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only circle hooks sized 18/0 or larger, with 10° offset, when shallow-setting north of the equator (0° lat.).

(g) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only mackerel-type bait when shallow-setting north of the equator (0° lat.).

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 660.23(a).

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the equator (0° lat.) any time during which the shallow-set component of the longline fishery is closed pursuant to paragraph (b)(3)(ii) of this section.

8. Section 660.34 is revised to read as follows:

§ 660.34 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

9. In § 660.35, new paragraph (a)(10) is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) * * *

(10) When shallow-setting north of 23° N. lat., begin the line-setting process at least one hour after local sunset and complete the setting process no later than local sunrise, using only the minimum vessel lights necessary for safety.

* * * * *

§ 660.36 [Removed and reserved]

10. Section 660.36 is removed and reserved.

[FR Doc. 04–1811 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 18

Wednesday, January 28, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–002N]

Bovine Spongiform Encephalopathy Teaching Workshops

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a series of teaching workshops from January through March 2004, to discuss the actions that FSIS has taken to prevent human exposure to Bovine Spongiform Encephalopathy (BSE) by ensuring that high-risk materials do not enter the human food supply. FSIS published three interim rules and a notice on January 12, 2004, that contain requirements for official establishments that slaughter cattle and process beef and beef products to prevent adulteration with the BSE agent. Each meeting will include an opportunity for the attendees to ask questions of the USDA representatives presiding over the meeting.

DATES: The workshops will be held on January 31, 2004 in Tacoma, WA; February 7, 2004 in Boise, ID; February 21, 2004 in Sioux Falls, SD; February 28, 2004 in Madison, WI; and March 6, 2004 in Binghamton, NY.

ADDRESSES:

January 31, 2004, in Tacoma, Washington—Sheraton Tacoma Hotel, 1320 Broadway Plaza, Tacoma, WA 98402, (253) 572–3200.

February 7, 2004, in Boise, Idaho—Red Lion Hotel Downtowner, 1800 Fairview Avenue, Boise, ID 83702, (208) 344–7691.

February 21, 2004, in Sioux Falls, South Dakota—Holiday Inn City Centre, 100 W. 8th St., Sioux Falls, SD 57104, (605) 339–2000.

February 28, 2004, in Madison, Wisconsin—Sheraton Madison Hotel, 706 John Nolen Drive, Madison, WI 53703, (608) 251–2300.

March 6, 2004, in Binghamton, New York—NYS Office of General Services, Binghamton State Office Building, 44 Hawley Street, Binghamton, NY 13901, (607) 722–0000 (This location may change).

A tentative agenda will be available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov*. FSIS highly recommends that attendees pre-register for the workshops. To pre-register please call 1 (800) 384–3100 and follow the prompts. Or you may register online at the following websites:

Tacoma, Washington: *http://www.fsis.usda.gov/forms/reg_tacoma.asp*

Boise, Idaho: *http://www.fsis.usda.gov/forms/reg_boise.asp*

Sioux Falls, South Dakota: *http://www.fsis.usda.gov/forms/reg_siouxfalls.asp*

Madison, Wisconsin: *http://www.fsis.usda.gov/forms/reg_madison.asp*

Binghamton, New York: *http://www.fsis.usda.gov/forms/reg_binghamton.asp*

FOR FURTHER INFORMATION CONTACT: Ms. Mary Harris of the FSIS Strategic Initiatives, Partnership and Outreach Staff at (202) 690–6497. If a sign language interpreter or other special accommodations are required, please contact Ms. Mary Harris, no later than January 29, 2004.

For technical information, please contact Ms. Mary Cutshall, Director, Strategic Initiatives, Partnerships and Outreach Staff, Office of Public Affairs, Education and Outreach, at (202) 690–6520.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2003, the U.S. Department of Agriculture activated its interagency emergency response plan for BSE. The emergency response was activated after the diagnosis of BSE in a Holstein cow slaughtered at an official establishment in the State of Washington. FSIS has taken several actions that are intended to prevent human exposure to materials that scientific studies have demonstrated can contain the BSE agent in cattle infected with the disease.

On January 12, 2004, FSIS published three interim final rules and a **Federal Register** notice to address this situation. The first, ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' prohibits the use of ''specified risk materials'' (SRM) from cattle in human food. The SRMs are defined in the rule as the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age or older and the tonsils and distal ileum of the small intestine of all cattle. The interim final rule also requires that all non-ambulatory disabled cattle that are presented for slaughter will be condemned.

The second rule, ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems,'' prohibits product prepared using AMR systems from being labeled as ''meat'' if it contains any spinal cord, dorsal root ganglia, trigeminal ganglia, or brain tissue from livestock. The Agency also established standards for the levels of calcium and iron in AMR product and banned the use of mechanically separated beef. AMR product from livestock other than cattle that contains central nervous-type tissues may be relabeled for use as MS product.

Another interim final rule, ''Prohibition on the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter,'' will ban the use of air injection stunning in official establishments.

A **Federal Register** notice, ''Bovine Spongiform Encephalopathy Surveillance Program,'' specifies that FSIS will not permit the carcasses or parts of ambulatory, non-disabled cattle that have passed FSIS ante mortem inspection, but have been selected by the Animal and Plant Health Inspection Service for testing, to enter the human food supply until negative sample results for the BSE agent are received by FSIS. The workshops are designed to provide an overview of the new regulatory requirements to owners and operators of small and very small establishments that slaughter or process cattle or produce AMR product. The

attendees will be provided with a more in-depth understanding of these new requirements to assist them in complying with these regulations. The workshops will also provide opportunities to discuss outreach to small and very small plants, ensuring that these establishments receive the guidance that they need to successfully respond to the new requirements. Representatives of the Animal and Plant Health Inspection Service will also participate in the workshops.

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 notice; 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 Internet at *http://www.fsis.usda.gov*. The 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.

Done at Washington, DC on January 23, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–1817 Filed 1–27–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC03

Stewardship End Result Contracting Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directive.

SUMMARY: The Forest Service is issuing an interim directive to provide guidance for stewardship end result contracting (commonly referred to as ''stewardship contracting'') projects. This interim directive provides internal administrative direction to guide Forest Service employees in planning, implementing, and monitoring of stewardship contracting projects. The interim directive is issued to Forest Service Handbook (FSH) 2409.19, Renewable Resources Handbook, Chapter 60, Stewardship Contracting, as interim directive No. 2409.19–2004–1.

EFFECTIVE DATE: The interim directive is effective January 28, 2004.

ADDRESSES: The interim directive is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsh/2409.19.* Single paper copies of the directive also are available by contacting the USDA Forest Service, Forest and Rangeland Management Staff, 3 SW., Stop Code 1103, 1400 Independence Avenue SW., Washington, DC 20250–1103.

FOR FURTHER INFORMATION CONTACT: Richard Cook, (202) 205–1762, or Darci Birmingham, (202) 205–1759, Forest and Rangeland Management Staff.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the Forest Service and the Bureau of Land Management (BLM) adopted jointly developed interim guidelines for implementation of the stewardship end results contracting provisions as authorized by section 323 of Public Law 108–7, the Consolidated Appropriations Resolution, 2003 (16 U.S.C. 2104 note). The Forest Service and BLM published a joint **Federal Register** notice with request for comment on the interim guidelines on June 27, 2003 (68 FR 38285).

Sixty-two (62) responses in the form of letters, faxes, and e-mail messages were received regarding the **Federal Register** notice of the interim guidelines on stewardship contracting. The comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and Federal agencies. Comments ranged from full support of the interim guidelines to the recommendation that the Forest Service not use much of the authority set out in 16 U.S.C. 2104 note.

Since publication of the **Federal Register** notice of the interim guidelines on stewardship contracting and receipt of comments, the Forest Service has developed an interim directive to provide internal administrative direction to guide Forest Service personnel in planning, implementing, and monitoring of stewardship contracting projects. The interim directive expands upon the interim guidelines and reflects the Forest Service's consideration of all comments received on the **Federal Register** notice of the interim guidelines.

The interim directive (ID) No. 2409.19–2004–1 is being issued to Forest Service Handbook 2409.19, Renewable Resources Handbook, Chapter 60, Stewardship Contracts.

Dated: January 22, 2004.

Dale N. Bosworth,

Chief, USDA Forest Service.

[FR Doc. 04–1791 Filed 1–27–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On December 24, 2003, the Department of Commerce (''the Department'') published in the **Federal Register** (68 FR 74550) a notice announcing the initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico. This administrative review covered two Mexican manufacturers of circular welded non-alloy steel pipe, Niples Del Norte S.A. de C.V. (''NDN'') and Hylsa S.A. de C.V. (''Hylsa''), for the period of November 1, 2002, through October 31, 2003. The Department has now rescinded this review as a result of requests by both parties to withdraw from the review.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: John Drury or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 7866, Washington, DC 20230; telephone (202) 482–0195 or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 2002/2003 review period on November 3, 2003 (68 FR 62279). Respondents NDN and Hylsa requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico.

The Department received timely requests for withdrawal from the administrative review from NDN on December 18, 2003, and from Hylsa on December 30, 2003. The applicable regulation, 19 CFR 351.213(d)(1), states that the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In light of the fact that all of the parties who initially requested an administrative review have withdrawn their requests in a timely manner, we are rescinding this review.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 16, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1833 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Final Results of Antidumping Administrative Review: Foundry Coke From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative review of foundry coke from the People's Republic of China.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on foundry coke from the People's Republic of China (''PRC'') in response to requests from ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively, ''Domestic Producers'' or ''Petitioners''). The period of review (''POR'') is from March 8, 2001, through August 31, 2002.

We received no comments on the preliminary results, and we have made no changes in our analysis. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Holton, Office of AD/CVD Enforcement 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1324.

Background

On October 7, 2003, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on foundry coke from the People's Republic of China. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China,* 68 FR 57869 (October 7, 2003) (''*Preliminary Results*''). We invited parties to comment on our preliminary results of the administrative review. No party submitted comments on our preliminary results. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of Review

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (''CBP'') purposes, our written description of the scope of this investigation is dispositive.

Analysis of Comments Received

Because no interested party submitted comments, the Department hereby adopts all findings from the *Preliminary Results* in these final results.

Final Results of Review

As a result of the application of adverse facts available, we determine that the following percentage dumping margin exists for the period March 8, 2001, through August 31, 2002.

Producer/manufacturer/exporter	Weighted-average margin (percent)
CITIC Trading Company, Ltd ...	214.89

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to CBP. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We will direct CBP to assess the resulting percentage margin against the entered CBP values for the subject merchandise on the importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(b)(1)).

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of this notice 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 date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit for the reviewed company will be the rate shown above; (2) for all previously investigated companies which have a separate rate, the cash-deposit rates will continue to be the company specific rates published for the most recent period; (3) for all other PRC exporters, including CITIC, the cash-deposit rate will be the PRC countrywide rate, which is 214.89 percent; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1832 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–852]

Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Christopher C. Welty at (202) 482–2336 or (202) 482–0186, respectively; AD/CVD Enforcement Group II, Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department of Commerce (Department) published its final determination in the antidumping duty investigation of prestressed concrete steel wire strand (PC strand) from the Republic of Korea (Korea). *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from the Republic of Korea*, 68 FR 68353 (December 8, 2003).

On January 21, 2004 the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Korea.

Scope Of The Order

For purposes of this order, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise subject to the order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Antidumping Duty Order

On January 21, 2004, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PC strand is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from Korea.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of PC strand from Korea. These antidumping duties will be assessed on (1) all unliquidated entries of PC strand from Korea entered, or withdrawn from warehouse, for

consumption on or after July 17, 2003, the date on which the Department published its notice of preliminary determination in the **Federal Register**,[1] and before January 13, 2004, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of PC strand from Korea made between January 13, 2004, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to the Department's termination, effective January 13, 2004, of the suspension of liquidation.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Kiswire Ltd.	54.19
Dong-Il Steel Manufacturing Co. Ltd.	54.19
All Others	35.64

This notice constitutes the antidumping duty order with respect to PC strand from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1825 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from the Republic of Korea*, 68 FR 42393 (July 17, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–828]

Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Martin Claessens at (202) 482–7425 or (202) 482–5451, respectively; AD/CVD Enforcement Group II, Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department of Commerce (Department) published its final determination in the antidumping duty investigation of prestressed concrete steel wire strand (PC strand) from India. *See Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India*, 68 FR 68352 (December 8, 2003).

On January 21, 2004 the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from India.

Scope Of The Order

For purposes of this order, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise subject to the order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Antidumping Duty Order

On January 21, 2004, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PC strand is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from India.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of PC strand from India. These antidumping duties will be assessed on (1) all unliquidated entries of PC strand from India entered, or withdrawn from warehouse, for consumption on or after July 17, 2003, the date on which the Department published its notice of preliminary determination in the **Federal Register**,[1] and before January 13, 2004, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of PC strand from India made between January 13, 2004, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to the Department's termination, effective January 13, 2004, of the suspension of liquidation.

On or after the date of publication of the ITC's notice of final determination in the Federal Register, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Tata Iron and Steel Co., Ltd. (TISCO)	102.07
All Others	83.65

This notice constitutes the antidumping duty order with respect to

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India*, 68 FR 42389 (July 17, 2003).

PC strand from India, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1826 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–820]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley, at (202) 482–3003 or (202) 482–0631, respectively; AD/CVD Enforcement Group II, Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department of Commerce (Department) published its final determination in the antidumping duty investigation of prestressed concrete steel wire strand (PC strand) from Thailand. *See Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand*, 68 FR 68348 (December 8, 2003) (Final Determination).

On January 21, 2004, the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act) that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Thailand.

Scope Of The Order

For purposes of this order, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise subject to this investigation and order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Amended Final Determination

On December 8, 2003, in accordance with section 735(a) of the Act, the Department published its final determination that PC strand from Thailand is being, or is likely to be, sold in the United States at less than fair value. *See Final Determination*. The respondents, Siam Industrial Wire Co., Ltd. and its U.S. affiliate Cementhai SCT USA (collectively, SIW), filed timely allegations that the Department had made ministerial errors in its final determination. We have determined, in accordance with 19 CFR 351.224, that certain ministerial errors were made in the final determination pertaining to the calculation of the cost of production and the deduction of a credit memo. For a detailed discussion of the Department's analysis of the allegations of ministerial errors, *see* Memorandum from Carol Henninger, International Trade Compliance Analyst, to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, Re: Ministerial Error Allegations for Siam Industrial Wire Co., Ltd. and Cementhai SCT USA (December 30, 2003). Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of PC strand from Thailand to correct these ministerial errors.

The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Original Weighted-Average Margin (Percent)	Amended Weighted-Average Margin Percent)
Siam Industrial Wire Co., Ltd.	12.99	12.91
All Others	12.99	12.91

Antidumping Duty Order

On January 21, 2004, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PC strand is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from Thailand.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of PC strand from Thailand. These antidumping duties will be assessed on (1) all unliquidated entries of PC strand from Thailand entered, or withdrawn from warehouse, for consumption on or after July 17, 2003, the date on which the Department published its notice of preliminary determination in the **Federal Register**,[1] and before January 13, 2004, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of PC strand from Thailand made between January 13, 2004, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to the Department's termination,

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand*, 68 FR 42373 (July 17, 2003).

effective January 13, 2004, of the suspension of liquidation.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted above.

This notice constitutes the antidumping duty order with respect to PC strand from Thailand, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1827 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–837]

Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: David Layton or Monica Gallardo at (202) 482–0371 or (202) 482–3147, respectively; AD/CVD Enforcement Group II, Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department of Commerce (Department) published its final determination in the antidumping duty investigation of prestressed concrete steel wire strand (PC strand) from Brazil. *See Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil*, 68 FR 68354 (December 8, 2003).

On January 21, 2004 the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Brazil.

Scope Of The Order

For purposes of this order, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise subject to the order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Antidumping Duty Order

On January 21, 2004, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PC strand is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from Brazil.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of PC strand from Brazil. These antidumping duties will be assessed on (1) all unliquidated entries of PC strand from Brazil entered, or withdrawn from warehouse, for consumption on or after July 17, 2003, the date on which the Department published its notice of preliminary determination in the **Federal Register**,[1] and before January 13, 2004, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of PC strand from Brazil made between January 13, 2004, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to the Department's termination, effective January 13, 2004, of the suspension of liquidation.

On or after the date of publication of the ITC's notice of final determination in the Federal Register, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Belgo Bekaert Arames S.A.	118.75
All Others	118.75

This notice constitutes the antidumping duty order with respect to PC strand from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1828 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil*, 68 FR 42386 (July 17, 2003)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–831]

Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: James Kemp or Daniel O'Brien at (202)

482–5346 or (202) 482–1376, respectively; AD/CVD Enforcement Group II, Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department of Commerce (Department) published its final determination in the antidumping duty investigation of prestressed concrete steel wire strand (PC strand) from Mexico. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003).

On January 21, 2004 the International Trade Commission (ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Mexico.

Scope Of The Order

For purposes of this order, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise subject to the order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States(HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Antidumping Duty Order

On January 21, 2004, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PC strand is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of the subject merchandise from Mexico.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of PC strand from Mexico. These antidumping duties will be assessed on (1) all unliquidated entries of PC strand from Mexico entered, or withdrawn from warehouse, for consumption on or after July 17, 2003, the date on which the Department published its notice of preliminary determination in the **Federal Register**,[1] and before January 13, 2004, the date on which the Department is required, pursuant to section 733(d) of the Act, to terminate the suspension of liquidation; and (2) on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Entries of PC strand from Mexico made between January 13, 2004, and the day preceding the date of publication of the ITC's notice of final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to the Department's termination, effective January 13, 2004, of the suspension of liquidation.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The weighted-average dumping margins are as follows:

Manufacturer/ exporter	Margin (percent)
Camesa	62.78
Cablesa	77.20
All Others	62.78

This notice constitutes the antidumping duty order with respect to PC strand from Mexico, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 42378 (July 17, 2003)

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1829 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of certain welded carbon steel pipes and tubes from Thailand until no later than March 30, 2004. The period of review is March 1, 2002, through February 28, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2243.

Background

On March 11, 1986, the Department issued an antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986). On March 31, 2003, the Department of Commerce (the Department) received a timely request for administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, the petitioners). On April 21, 2003, the Department published a notice of initiation of this administrative review, covering the period of March 1, 2002, through February 28, 2003 (68 FR 19498), for Saha Thai Steel Pipe Co., Ltd. (Saha Thai). On July 29, 2003, petitioners submitted a timely request for verification of Saha Thai. The preliminary results for Saha Thai are

currently due no later than December 1, 2003.

Extension of Time Limits for Preliminary Results

The Department has determined that it is not practicable to complete this review within the statutory time limits because this review involves complex issues with respect to normal value and U.S. price, including duty drawback, duty absorption, major input costs, and other issues which require the Department to analyze a significant amount of information. Given these facts, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. The Department is therefore extending the time period for issuing the preliminary results of this review by 120 days, from December 1, 2003, until no later than March 30, 2004, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) of the Act.

Dated: November 7, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–1831 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–055. *Applicant:* Stanford University, Department of Neurobiology, 299 Campus Drive West D243, Stanford, CA 94305. *Instrument:* Electron Microscope, Model Tecnai G^2 Polara. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for biomedical experiments including the following:

(1) Research on the nervous system to expose the structure of the neuromuscular junction and other synapses at nanometer scale.

(2) Applying current methodology to the structure determination of giant, multiprotein transcription complexes at nanometer resolution, and developing a new approach for extension of single particle analysis to near atomic resolution.

(3) Cell biological and molecular bases of dendrite growth and synapse formation in the vertebrate central nervous system. Application accepted by Commissioner of Customs: December 17, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–1834 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products From Germany: Preliminary Results of Countervailing Duty Changed Circumstances Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty changed circumstances reviews.

SUMMARY: On December 3, 2003, in response to a request by domestic producers of the subject merchandise, the Department of Commerce (the Department) published a notice of initiation of changed circumstances reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate Products from Germany: Initiation of Countervailing Duty Changed Circumstances Reviews,* 68 FR 67657 (December 3, 2003) (*Initiation Notice*). In the *Initiation Notice,* we invited interested parties to comment on the Department's initiation. We received comments from both domestic and foreign parties. As a result of our review of the comments, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like products to which these orders pertain lack interest in the relief provided by the orders.

Unless the Department receives opposition from domestic producers whose production accounts for more than 15 percent of the domestic like product, the Department will revoke the orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany in the final results of these reviews.

Therefore, we preliminarily revoke these orders, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after April 1, 2004, because domestic parties have expressed no interest in the continuation of the orders after that date.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See Countervailing Duty Orders and Amendment to Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Germany,* 58 FR 43756 (August 17, 1993). On October 22, 2003, International Steel Group, Inc. (purchaser of Bethlehem Steel Corporation) and United States Steel Corporation, requested that the Department revoke the countervailing duty orders, effective April 1, 2004, based on their lack of further interest in these proceedings.

On December 3, 2003, the Department published a notice of initiation of changed circumstances reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany. *See Initiation Notice.* In the *Initiation Notice* we invited interested parties to comment on the Department's initiation.

We received comments from Ispat Inland Inc. (Ispat). Ispat did not object to the changed circumstances review of the order on cut-to-length carbon steel plate products. However, Ispat opposed the initiation of the review on the countervailing duty order on certain corrosion-resistant carbon steel flat products from Germany, expressing continued support for the relief provided by that order.

Ispat questioned whether domestic producers accounting for substantially all, or at least 85 percent, of the production of the domestic like product supported revocation of the order on certain corrosion-resistant carbon steel flat products. Based on Ispat's expressed objection and the fact that those producers requesting revocation did not demonstrate that they account for 85 percent of domestic production, Ispat requested that the Department, at the very least, issue questionnaires to the appropriate interested parties to determine whether, in fact, 85 percent of the domestic industry supports revocation of the order.

The German Producers (AG der Dillinger Hüttenwerke, EKO Stahl GmbH, Salzgitter AG Stahl und Technologie, Stahlwerke Bremen GmbH and Thyssen Krupp Stahl AG) submitted comments supporting the revocation of both countervailing duty orders. The German Producers expressed their belief that International Steel Group, Inc. and United States Steel Corporation account for 85 percent of domestic production of both products. They also argued that revocation of the orders should not be made contingent upon such a requirement in light of the wide latitude provided to the Department by the statute and regulations.

Scope of the Orders

The products covered by these reviews are certain corrosion-resistant carbon steel flat products and cut-to-length steel plate products from Germany.

(1) *Certain corrosion-resistant carbon steel flat products:* the scope of countervailing duty order of certain corrosion-resistant carbon steel flat products (corrosion-resistant) includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a ''20 percent—60 percent—20 percent'' ratio. On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel. *See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany,* 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

(2) *Certain cut-to-length carbon steel plate products:* The scope of countervailing duty order on certain cut-to-length carbon steel plate products (cut-to-length steel) includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2. *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part,* 64 FR 46343 (August 25, 1999).

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Preliminary Results of Reviews and Intent To Revoke in Whole the Countervailing Duty Orders

Pursuant to section 751(d)(1) of the 1930 Tariff Act, as amended (the Act), and 19 CFR 351.222(g), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. The Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review,* 66 FR 52109 (October 12, 2001); *see also,* 19 CFR 351.208(c).

As noted above and in the *Initiation Notice,* the petitioners requested the revocation of these orders because they are no longer interested in maintaining the orders or in the imposition of duties on the subject merchandise as of April 1, 2004. Because the Department did not receive any comments during the comment period opposing initiation of the changed circumstances review of the countervailing duty order on cut-to-length carbon steel plate from Germany, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order. With respect to the countervailing duty order on certain corrosion-resistant carbon steel flat products from Germany, Ispat argued that the Department should issue questionnaires to determine whether 85 percent of the industry supports revocation of the order. We disagree. In the course of this changed circumstances review, we are providing ample opportunity to all parties to express their support for or opposition to the revocation of this order. As a result, it is not necessary to take the additional step of issuing questionnaires. Therefore, because the Department did not receive objections from domestic producers accounting for more than 15 percent of production of the domestic like product, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by the order.

In accordance with 19 CFR 351.222(g), the Department preliminarily determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant revocation of the orders. Therefore, the Department is preliminarily revoking the orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany, in whole.

Unless the Department receives opposition within the time limit set forth below from domestic producers whose production, cumulatively, totals more than 15 percent of the domestic like product, the Department will revoke the orders on certain corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate products from Germany in its final results of review. If, as a result of these reviews, we revoke the orders, we intend to instruct the U.S. Customs and Border Protection (CBP) to terminate suspension of liquidation effective April 1, 2004. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue unless, and until, we publish a final determination to revoke the orders in whole.

Public Comment

Interested parties may submit case briefs not later than 21 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such case briefs, may be filed not later than 26 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, may be held 22 days after the date of publication of this notice, or the first working day thereafter, as practicable. Consistent with § 351.216(e) of the Department's regulations, we will issue the final results of these changed circumstances reviews not later than 270 days after the date on which these reviews were initiated.

This notice is published in accordance with section 751(b)(1) of the Act and §§ 351.216 and 351.222 of the Department's regulations.

Dated: January 22, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1830 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the contact officer indicated for each individual mission below.

Information and Communication Technology Trade Mission

Toronto, Canada, April 21–22, 2004. Recruitment closes March 8, 2004. **FOR FURTHER INFORMATION CONTACT:**

Viktoria Palfi, U.S. Commercial Service, Toronto, Tel: (416) 595–5412, ext. 229, E-mail: *viktoria.palfi@mail.doc.gov.*

Natural Health Products Trade Mission

Montreal, Canada, March 29–30, 2004. Recruitment closes March 8, 2004. **FOR FURTHER INFORMATION CONTACT:** Pierre Richer, U.S. Commercial Service, Montreal, Tel: (514) 398–9695, ext. 6–2261, E-mail: *pierre.richer@mail.doc.gov.*

Plastics Trade Mission to Canada

Toronto, Canada, May 3–4, 2004, Recruitment closes March 19, 2004, **FOR FURTHER INFORMATION CONTACT:** Madellon C. Lopes, U.S. Commercial Service, Toronto, Tel: (416) 595–5412, Ext. 227, E-mail: *madellon.lopes@mail.doc.gov.*

REPCAN 2004

Toronto, Canada, June 16–17, 2004. Recruitment closes April 23, 2004. **FOR FURTHER INFORMATION CONTACT:**

Rita Patlan, U.S. Commercial Service, Toronto, Tel: (416) 595–5412, Ext. 223, E-mail: *rita.patlan@mail.doc.gov.*

Explore BC

Vancouver, Canada, June 22–23, 2004. Recruitment closes May 21, 2004. **FOR FURTHER INFORMATION CONTACT:**

Cheryl Schell U.S. Commercial Service, Vancouver, BC, Tel: 604–642–6679, E-mail: *cheryl.schell@mail.doc.gov.*

Women's Apparel Trade Mission to Europe

Dusseldorf, Germany, March 15–16,2004, London, England, March 18–19,2004, and Stockholm, Sweden, March 22–23, 2004. Recruitment closes February 4, 2004. **FOR FURTHER INFORMATION CONTACT:** Rachel Alarid, Trade Development, Washington DC, Tel: (202) 482-5154, E-mail: *Rachel_Alarid@ita.doc.gov.*

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997. **FOR FURTHER INFORMATION CONTACT:** Mr. John Klingelhut, U.S. Department of Commerce, telephone (202) 482–3304 or e-mail *John.Klingelhut@mail.doc.gov.*

Dated: January 7, 2004.

Kam Shah,

Office of International Operations.

[FR Doc. 04–1767 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 040113014–4014–01]

NOAA Oceans and Human Health Initiative, FY 2004 Program Announcement

AGENCY: Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to solicit extramural research proposals under NOAA's new Oceans and Human Health Initiative (OHH). The OHH is a competitive suite of programs designed to address the increasingly important role of the oceans on human health. From increased harmful algal blooms to beach closures, from infectious diseases to marine toxins and pathogens, from seafood safety and testing to sentinel species, and from drug discovery to pharmaceuticals, this new initiative is designed to build on the existing work throughout NOAA to enhance NOAA's expertise in the oceans and human health arena through partnerships across NOAA, with other Federal and State agencies, and with academia and the private sector. This funding opportunity is intended to engage the non-federal research community in interdisciplinary research combining the physical science, biological science, medical and public health communities in (1) taking an ecosystems approach to understanding and predicting the pathways through which ocean processes affect human health, or (2) promoting the ecologically sound discovery and use of marine organisms and bioactive agents for human health benefit. Building on NOAA's strengths in assessment, prediction, and exploration, research should be structured to provide useful information for public health and natural resource policy and decision-making on issues at the interface of ocean processes and human health outcomes related to NOAA's mission. Interested applicants should refer to the full text of the Federal Funding Opportunity (FFO) for further criteria and submission details. The FFO is available at the addresses listed below in the section on Electronic Access. This solicitation announces approximately $3.0 Million available from FY03 appropriation for research projects funded under this OHH external, peer-reviewed, grants program. Pending FY04 appropriation and internal policy decisions, an additional $3.0–$4.0 Million may be available to supplement funds for awards made under this solicitation. Interested applicants should read the Federal Funding Opportunity for complete requirements. See section below on electronic access for web addresses.

DATES: Letters of Intent (LOI) should be received by 5 p.m. eastern time February 27, 2004. Full Proposals must be received at NOAA's Office of Global Programs by 5 p.m. eastern time April 23, 2004.

ADDRESSES: Full Proposals must be submitted to: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1210, Silver Spring, MD 20910–5603. Letters of Intent should be submitted by e-mail to *ogpgrants@noaa.gov.*

General Information Contact: Diane S. Brown, Grants Manager (*see* **ADDRESSES**), phone at 301–427–2089, ext. 107, fax to 301–427–2222, or e-mail at *ogpgrants@nooa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access: Applicants should read the full text of the funding opportunity announcement, which can be accessed at OGP's Web site: *http://www.ogp.noaa.gov* or the central NOAA site: *http://www.ofa.noaa.gov/~amd/SOLINDEX.HTML.* This announcement will also be available through Grants.gov at *http://www.Grants.gov.* The standard NOAA application kit is available on the OGP Web site at: *http://www.opg.noaa.gov/grants/appkit.htm.*

Funding Availability: Based on the approved OHH spending plan, this solicitation announces approximately $3.0 Million available from FY03 appropriation for research projects funded under this OHH external, peer-reviewed, grants program. Pending FY04 appropriation and internal policy decisions, an additional $3.0–$4.0 Million may be available to supplement funds for awards made under this FFO. We anticipate that the cost of most funded projects will fall between $50,000 and $250,000 per year. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Proposals may be for up to a three-year period. It is anticipated that the funding instrument for most of the extramural

awards will be a grant; however, in some cases, if NOAA will be substantially involved in the implementation of the project, the funding instrument may be a cooperative agreement. Neither NOAA nor the Department of Commerce is responsible for proposal preparation costs if this program is not funded for whatever reason. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2931–2934.

CFDA: 11.460—Special Oceanic and Atmospheric Projects

Eligibility: Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, State, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Cost Sharing Requirements: This program does not require matching share.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarship/internships for Fiscal Year 2004 in the **Federal Register** on June 30, 2003 (68 FR 38678). The evaluation criteria and selection procedures contained in the June 30, 2003 omnibus notice are applicable to this solicitation. For a copy of the June 30, 2003 omnibus notice please go to: *http://www/ofa.noaa.gov/~amd/SOLINDEX.HTML.*

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2002 (67 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, SF–LLL, and CD–346, have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 23, 2004.

Richard D. Rosen,

Assistant Administrator, Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–1783 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–KB–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 040116021–4021–01

Rural Wireless Broadband Access in the 3650–3700 MHz Band

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The National Telecommunications and Information Administration (NTIA) invites interested parties to review and comment on the questions presented in this Notice to assist NTIA in developing recommendations to the Federal Communications Commission (FCC) on the use of the 3650–3700 MHz band for unlicensed devices. NTIA's specific interest is to ensure the continued protection of operations of Government agencies in this band. In order to ensure that these Federal operations are not adversely affected, NTIA is seeking public comment to explore the merits of frequency and/or geographic avoidance technologies, and other interference-mitigation techniques, and to examine technical requirements to allow compatible unlicensed device usage in the 3650–3700 MHz band. NTIA believes that by making this band available with appropriate regulatory provisions, broadband wireless access would be facilitated in rural areas. NTIA supports the FCC in its efforts to introduce advanced communications to rural areas, and seeks to ensure that the interests of the Federal Government users of spectrum are adequately protected. NTIA has determined that it is important to examine the issues related to the use of unlicensed devices and wireless broadband, and to develop recommendations regarding specific regulations for the use of the 3650–3700 MHz band as a follow-on to the new spectrum allocated at 5 GHz for unlicensed broadband devices.[1] Some initial conclusions about the 3650–3700 MHz band are discussed in NTIA comments in *Additional Spectrum for Unlicensed Devices Below 900 MHZ and in the 3 GHz Band* proceeding.[2] Comments submitted in this proceeding will be posted on NTIA's website.

DATES: Written comments and papers in response to this Notice are requested to be submitted on or before February 27, 2004.

ADDRESSES: Submit an original and two copies of written comments to the Office of the Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4713, Attention: Unlicensed Devices Proceeding, Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments and papers may be submitted electronically

[1] *Revision of Parts 2 and 15 to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 03–122, Report and Order, FCC 03–287 (released, Nov. 12, 2003).

[2] *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Doc. No. 02–380, Notice of Inquiry, 17 F.C.C.R. 25632 (2002) (*Additional Spectrum for Unlicensed Devices*). *See also*, Spectrum for Unlicensed Devices, 68 Fed. Reg. 2730 (Jan. 21, 2003).

to spectrumplans@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact: Charles Glass, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4606, Washington, DC 20230, (202) 482–1896, or cglass@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

President Bush, in his Technology Agenda and at the Administration's economic summit in Waco, Texas, called for an aggressive expansion of broadband, recognizing the promise of high-speed future communications.[3] In addition to enhancing business efficiencies and broadening commercial opportunities, broadband holds the promise of expanding educational opportunities, improving health care, increasing government responsiveness to its citizens, and generally enhancing our global competitiveness. Thousands of new jobs could result from greater broadband deployment, both directly through network construction, and indirectly through industries related to advanced networks and services. Broadband represents an important potential source of growth and investment for the United States.

The Administration supports technology-neutral solutions where feasible and supports the removal of unnecessary government impediments to competition and broadband deployment. In support of the Administration's policy, NTIA recently has taken steps to promote the expansion of broadband, for example, by spearheading an effort to bring the Defense Department and the U.S. technology industry together to permit devices using Wi-Fi technologies to co-exist with sensitive military radar systems in the 5 GHz frequency band. Within the scope of this proceeding, NTIA intends to facilitate advanced, low-cost wireless broadband deployment in rural areas.

The Federal Communications Commission issued a Proposed Rule and Notice of Inquiry in December 2002 on use of spectrum below 900 MHz and in the 3650–3700 MHz band as new unlicensed spectrum bands.[4] On May 7, 2003, NTIA filed comments in response to the FCC's Notice of Inquiry in the *Additional Spectrum for Unlicensed Devices* proceeding commending the FCC for seeking to expand the options for unlicensed use of the 3650–3700 MHz band and, particularly, for linking such expanded use to the adoption of new technologies for active-interference avoidance.[5] There appear to be very significant benefits to the economy, businesses, consumers, and government agencies that can be gained by allowing unlicensed devices to operate in certain other bands at higher power levels than currently permitted by the FCC's Part 15 rules for use of the 2.4 and 5.8 GHz bands that are widely used for rural broadband applications. In particular, given the limited bandwidth currently available (50 MHz), the use of higher power usage in the 3650–3700 MHz band could provide great benefit in the rural markets but would most likely have limited success in urban markets due to the lack of supportable competition due to interference given the typical channel width of 20 MHz.

Because of the Federal Government uses of the 3650–3700 MHz band, however, NTIA must address the potential impact that the unlicensed devices could have on critical Federal systems. NTIA identified the 3650–3700 MHz frequency band pursuant to the Omnibus Budget Reconciliation Act of 1993 (OBRA-93) for reallocation from Federal Government use to a mixed-use basis effective January 1999.[6] Under the reallocation, the Federal Government has indefinitely retained systems and operations at three sites where full use of the 3500–3700 MHz by the Department of the Navy is required at these sites on a primary basis. The locations of these sites are: St. Inigoes, MD (38° 10′ 00″N 76° 23′ 00″W); Pascagoula, MS (30° 22′ 00″N 88° 29′ 00″W); and Pensacola, FL (30° 21′ 28″N 87° 16′ 26″W). Original agreement on the mixed use of this band required coordination within an 80 km radius of operation around the Federal Government sites in order to provide adequate protection from harmful interference.

In order to ensure that these Federal operations are not adversely affected, NTIA is seeking public comment to explore the merits of frequency and/or geographic avoidance technologies, and other interference-mitigation techniques, and to examine technical requirements to allow compatible unlicensed device usage in the 3650–3700 MHz band.

II. Invitation to Comment

In conjunction with providing information for consideration by NTIA, interested parties are requested to address the following questions and file comments that will assist NTIA in making a recommendation on the proper use of the 3650–3700 MHz band. In addressing the questions posed in this Notice, commenters should attempt to address both the costs and benefits of a given solution. In doing so, commenters should be mindful not only of the private costs and benefits of an action but also seek to identify any public effects. In gauging such costs and benefits, comments should be as specific as possible. Commenters may include any other issue that is relevant to the areas outlined below. Comments will be posted on NTIA's website at http://www.ntia.doc.gov.

A. Spectrum Regulatory and Policy Approaches

1. What types of services are appropriate to be offered using the unlicensed devices operating in the band? What limitations or restrictions, if any, should be placed on the use of the band?

2. Given the geographic limitations required to protect the Federal Government sites, can the 3650–3700 MHz band be used effectively for ubiquitous unlicensed operations?

3. Given the apparent interest in higher power and perhaps more robust systems to provide effective broadband access, what type of licensing requirements are appropriate? Would it be practical to introduce some form of notification for certain types of unlicensed systems in order to reduce the potential for causing interference?

4. Would there be a benefit in terms of limiting the potential for interference in this band by using both licensed and unlicensed approaches, perhaps each with different technical characteristics (e.g., licensing higher power devices with low power devices operating as unlicensed devices)?

5. Is there a benefit in tying the use of the 3650–3700 MHz band to

[3] *See* "Promoting Innovation and Competitiveness: President Bush's Technology Agenda," *available at* http://www.whitehouse.gov/infocus/technology/tech1.html.

[4] *See Additional Spectrum for Unlicensed Devices*, supra note 2.

[5] Comments of the National Telecommunications and Information Administration, ET Doc. No. 02–380, at 2–3 (May 7, 2003)(NTIA Comments), *available at* http://www.ntia.doc.gov/ntiahome/fccfilings/2003/et02-380comments__05072003.wpd.htm.

[6] *See* National Telecommunications and Information Administration, NTIA Special Publication 95–32, *Spectrum Reallocation Final Report* (Feb. 1995)(NTIA Final Report); *see also Omnibus Budget Reconciliation Act of 1993*, Pub.L.No. 103–66, Title VI,§ 6001, 107 Stat. 312, 379 (1993), *codified at*47 U.S.C. § 921 *et seq.* (amended the NTIA Organization Act to add a new part B).

operations in another band? What band combinations would be appropriate? Are there specific technical requirements that would need to be employed (e.g., power, gain, antenna type or height)?

6. Are there developments occurring outside the United States that should be taken into account?

B. Mitigation Measures

1. What mitigation measures can be employed to enhance spectrum utilization while providing protection for the Federal Government sites?

a. Should measures such as Dynamic Frequency Selection, be employed to maximize spectrum reuse and to ensure protection of the Federal Government sites? Would these same measures also assist in reducing interference between unlicensed devices?

b. Can geographic mitigation measures, such as limiting devices sold in the region of the Federal Government sites, work given that the band may be used by unlicensed devices?

c. Should mitigation measures such as location identification be required in the devices that would ensure the device does not operate co-channel with the Federal Government sites? How could this be accomplished?

d. Would these same measures allow other services to operate in the band if they were similarly geographically limited?

2. Discuss other mitigation measures that may be useful or necessary for unlicensed devices to operate in the 3650–3700 MHz band.

C. Technical Issues

1. In the development of specific mitigation measures, it will be important to understand the typical deployment scenario for use by all devices, including wireless broadband devices, in this band. Specifically, discuss the following technical issues with regard to each mitigation measure.

a. The maximum power to be used if the devices operate as licensed and/or unlicensed.

b. The gain the devices employ if licensed or unlicensed.

c. The density that would be expected from deployment of these devices, and, specifically, the kind of modeling scenario that should be used to capture this.

d. The type of antenna technologies (e.g., sector or adaptive antennas) expected to be employed and their heights.

2. What levels of mitigation can be expected from different mitigation approaches?

3. More generally, are there particular technical approaches that should be used for this band to increase its utility to meet rural broadband needs?

Please provide copies of studies, reports, opinions, research or other empirical data referenced in your responses.

Dated: January 22, 2004.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 04–1755 Filed 1–27–04; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the public meeting on March 8, 2004 from 3:30 p.m. until approximately 5:30 p.m., and on March 9, 2004 from 8:15 a.m. until approximately 3:30 p.m. in New Hampshire Rooms One & Two at The Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. You may call the hotel at (202) 775–0800 or fax the hotel at (202) 887–9171 to inquire about room accommodations.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7563, 1990 K St. NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Are the Functions of the National Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended. The Committee's responsibilities are to:

- Evaluate the standards of accreditation applied to applicant foreign medical schools; and
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Items Will Be on the Agenda for Discussion at the Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision.

The countries tentatively scheduled to be discussed at the meeting include Canada, Costa Rica, Czech Republic, Dominican Republic, India, Israel, Lebanon, Mexico, the Netherlands, Pakistan, the Philippines, St. Lucia, and St. Maarten. Beginning February 23, you may call the contact person listed above to obtain the final listing of the countries whose standards will be discussed during this meeting. The listing of countries will also be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/admins/finaid/accred/accreditation_pg21.html#NCFMEA.*

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: January 22, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–1782 Filed 1–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the form FE–781R, ''Report of International Electrical Export/Import Data'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by February 27, 2004. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. FE–781R, ''Report of International Electrical Export/Import Data''.
2. Fossil Energy.
3. OMB Number 1901–0296.
2. Extension (Three-year).
5. Mandatory.
6. FE–781R collects electrical import/export data from entities authorized to export electric energy, and from entities holding Presidential Permits to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are used by Fossil Energy to monitor the levels of electricity imports and exports and are also used by EIA for publication.
7. Holders of Presidential Permits are required to report.
8. 600 hours (40 respondents times 1 response per year times 10 hours = (400 hours) plus 25 respondents times 4 responses per year times 2 hours = 200 hours).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, January 22, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–1801 Filed 1–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–77–001 and RP00–445–007]

Alliance Pipeline L.P.; Notice of Compliance Filing

January 21, 2004.

Take notice that on January 15, 2004, Alliance Pipeline L.P. (Alliance) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below, proposed to be effective January 1, 2004:

Docket No. RP04–77–000

Substitute First Revised Sheet No. 300

Docket No. RP00–445–006

Substitute Third Revised Sheet No. 11
Substitute Third Revised Sheet No. 12
Substitute Third Revised Sheet No. 13
Substitute Third Revised Sheet No. 14

Alliance states that the listed tariff sheets are being filed in compliance with the letter order issued in referenced dockets on December 31, 2003 (105 FERC ¶ 61,400 (2003)). Alliance states that the revised tariff sheets revise Section 2 of Alliance's pro forma Firm Transportation Agreement such that contract extension rights for each contract can be specified by filling in blank spaces limited to the term of the contract extension and the prior notice of the extension; and revising the negotiated rate contract summaries in Alliance's FERC Gas Tariff to reflect the contract term for each agreement.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–126 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–51–000]

ANR Pipeline Company; Notice of Application

January 21, 2004.

Take notice that ANR Pipeline Company (ANR), Nine E. Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP04–51–000 on January 12, 2004, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, for authority to (1) replace a 4.7-mile section of an existing 14-inch mainline pipe with 30-inch pipe in Washington County, Wisconsin; (2) construct and install a 3.5-mile, 8-inch looping pipeline in Brown County, Wisconsin; and (3) at an existing compressor station in Oconto County, Wisconsin, add a gas cooling unit, re-wheel an existing 9100 hp compressor unit. ANR states that the proposed project, referred to as the EastLeg Project, is intended to provide service to two new power plants, all as more fully set forth in the application which is on file with the Commission and open to public inspection. ANR further states that this filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Kevin Erwin, Senior Counsel, ANR Pipeline Company, Nine E. Greenway Plaza, Suite 1866, Houston, Texas 77046, phone (832) 676–5501 or fax (832) 676–2251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may wish to comment only on the environmental review of these projects. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or nonenvironmental documents issued by the Commission. They will not have the right to seek court review of the Commission's final order. Concidentally with this Notice of Application, the Commission is issuing a notice regarding the environmental comment process. This notice describes the comment procedures and comment deadline.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–120 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–118]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

January 21, 2004.

Take notice that on January 14, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth

Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 1
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 70
First Revised Sheet No. 72
Original Sheet No. 72A
First Revised Sheet No. 421
Original Sheet No. 421A
First Revised Sheet No. 455
First Revised Sheet No. 469
Original Sheet No. 469A
First Revised Sheet No. 476
Original Sheet No. 476A
First Revised Sheet No. 590
First Revised Sheet No. 683
First Revised Sheet No. 728
First Revised Sheet No. 729
First Revised Sheet No. 730
Original Sheet No. 731
Original Sheet No. 732
Original Sheet No. 733
Original Sheet No. 734
Original Sheet No. 735
Original Sheet No. 736
Sheet Nos. 737—741
Original Sheet No. 788
Original Sheet No. 789
Sheet Nos. 790—798

CEGT states that the purpose of this filing is to comply with the Commission's Order Directing Filing of Tariff Provisions and Modifying Non-Conforming Agreements in Docket Nos. RP96–200–092, 097, 101–108, 110–111, CenterPoint Energy Gas Transmission Company, 104 FERC ¶ 61,281 (2003).

CEGT states that it intends for these tariff sheets to take effect on the first day of the month after the Commission issues an order approving this compliance filing. However, the proposed tariff sheets show an effective date of March 1, 2004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E4–127 Filed 1–27–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–70–004]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

January 21, 2004.

Take notice that on January 14, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1–A. The tariff sheets are listed in Appendix A to the filing, with a May 8, 2003 effective date.

GTN states that the filing is being made to comply with the Commission's December 24, 2003 Order on Compliance and Rehearing in this proceeding.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E4–123 Filed 1–27–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–141–000]

Gas Transmission Northwest Corporation; Notice of Refund Report

January 21, 2004.

Take notice that on January 15, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of interruptible transportation revenues collected on its Coyote Springs Lateral, in compliance with Section 35A of GTN's FERC Gas Tariff, Third Revised Volume No. 1–A.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Comment Date: January 28, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–124 Filed 1–27–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–7–000]

Raptor Natural Pipeline, LLC; Notice of Petition for Rate Approval

January 21, 2004.

Take notice that on December 31, 2003, Raptor Natural Pipleline LLC (Raptor) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for firm and interruptible transmission services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). Raptor proposes an effective date of January 1, 2004. Raptor states that it is an intrastate pipeline company providing services through its facilities located in New Mexico.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.314 or § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–125 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–56–000, et al.]

New York Municipal Power Agency, et al.; Electric Rate and Corporate Filings

January 20, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Municipal Power Agency, Complaint v. New York State Electric & Gas Corporation, Respondent

[Docket No. EL04–56–000]

Take notice that on January 16, 2004, the New York Municipal Power Authority, on behalf of its affected member municipal systems (NYMPA), filed a Complaint concerning certain elements of the Transmission Service Charge currently assessed by the New York State Electric & Gas Corporation (NYSEG) under Attachment H of the Open Access Transmission Tariff of the New York Independent System Operator, Inc.

NYMPA states that a copy of the Complaint was served on NYSEG.

Comment Date: February 5, 2004.

2. Northbrook New York, LLC

[Docket No. ER99–3911–002]

Take notice that on January 13, 2004, Northbrook New York, LLC tendered for filing its triennial review in compliance with the Commission's Order in Oswego Harbor Power LLC, et. al., Docket No. ER99–3637–000, 88 FERC ¶ 61,219 (1999), which gave Northbrook market-based rate authorization.

Comment Date: February 3, 2004.

3. New England Power Pool ISO New England Inc.

[Docket No. ER03–1318–003]

Take notice that on January 13, 2004, ISO New England Inc. (ISO) submitted a Compliance Report in Docket No. ER03–1318–000 as directed by the Commission in its November 14, 2003 Order Accepting Forward Reserve Market Filing, 105 FERC ¶ 61,204. The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: February 3, 2004.

4. Sempra Energy Trading Corp.

[Docket Nos. ER03–1413–002]

Take notice that on January 14, 2004, Sempra Energy Trading Corp. (SET) submitted for filing a revised rate schedule, modifying the rate schedule submitted on November 24, 2003 in the above-referenced docket.

Comment Date: January 30, 2004.

5. Mountain View Power Partners III, LLC

[Docket Nos. ER04–94–001]

Take notice that on January 14, 2004, Mountain View Power Partners III, LLC (Mountain View) tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations revisions to Mountain View's market-based rate tariff designated as FERC Electric Tariff, First Rev.Volume No. 1. Mountain View requests waiver of the Commission's prior notice requirements so that the revisions may be effective on December 17, 2003 in compliance with the Commission's Order in Docket No. EL01–118, 105 FERC ¶ 61,218 (November 17, 2003).

Mountain View states that it has served a copy of this filing on all parties designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: February 4, 2004.

6. NRG Northern Ohio Generating LLC

[Docket No. ER04–106–000]

Take notice that on January 14, 2004, NRG Northern Ohio Generating LLC (NRG Northern Ohio) submitted pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a notice canceling NRG Northern Ohio's FERC Rate Schedule No. 1 and Service Agreement No. 1 thereunder. NRG Northern Ohio requests that the cancellation be made effective January 14, 2004.

Comment Date: February 4, 2004.

7. Avista Corporation

[Docket No. ER04–196–001]

Take notice that on January 13, 2004, Avista Corporation (Avista) tendered for filing pursuant to Section 205 of the Federal Power Act, a replacement certificate of concurrence by Portland General Electric Company for Rate Schedule No. 701. The Rate Schedule was initially filed on November 17, 2003 in Docket No. ER04–196–000. Avista is requesting November 1, 2003 as the effective date.

Comment Date: February 3, 2004.

8. PacifiCorp

[Docket No. ER04–398–000]

Take notice that on January 13, 2004, PacifiCorp submitted for filing the 2003–04 Operating Procedures with respect to the 1997 Pacific Northwest Coordination Agreement (the 1997 PNCA). PacifiCorp states that the 2003–04 Operating Procedures amend the 1997 PNCA.

PacifiCorp further states that copies of the filing were served on the parties to the 1997 PNCA.

Comment Date: February 3, 2004.

9. Westar Energy, Inc.

[Docket No. ER04–399–000]

Take notice that on January 13, 2004, Westar Energy, Inc. (Westar) submitted for filing an Interconnection Agreement between Westar and Kaw Valley Electric Cooperative, Inc (Kaw Valley). Westar states that this filing allows it to deliver electric power and energy across Kaw Valley's facilities for redelivery to Westar's Hoyt, Rossville or Delia metering points from time to time.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and Kaw Valley

Comment Date: February 3, 2004.

10. Tampa Electric Company

[Docket No. ER04–401–000]

Take notice that on January 14, 2004, Tampa Electric Company (TEC) tendered for filing a notice of cancellation of the Interconnection and Operating Agreement between TEC and CPV Pierce, Ltd. (CPV). TEC requests that the cancellation be made effective on January 5, 2004, as ally agreed by the parties.

TEC states that copies of the filing have been served on CPV and the Florida Public Service Commission.

Comment Date: February 4, 2004.

11. NRG Ashtabula Generating LLC

[Docket No. ER04–402–000]

Take notice that on January 14, 2004, NRG Ashtabula Generating LLC (NRG Ashtabula) submitted pursuant to 18 CFR 35.15 a Notice of Cancellation of FERC Rate Schedule No. 1. NRG Ashtabula requests that the cancellation be made effective January 14, 2004.

Comment Date: February 4, 2004.

12. LSP-Pike Energy LLC

[Docket No. ER04–404–000]

Take notice that on January 14, 2004, LSP-Pike Energy LLC submitted pursuant to 18 CFR 35.15 a Notice of Cancellation of FERC Rate Schedule No. 1. LDP-Pike Energy LLC requests that the cancellation be made effective January 14, 2004.

Comment Date: February 4, 2004.

13. NRG Lake Shore Generating LLC

[Docket No. ER04–405–000]

Take notice that on January 14, 2004, NRG Lake Shore Generating LLC (NRG Lake Shore) submitted pursuant 18 CFR 35.15 a Notice of Cancellation of FERC Rate Schedule No. 1. NRG Lake Shore requests that the cancellation be made effective January 14, 2004.

Comment Date: February 4, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–129 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–34–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line 1278 Replacement Project and Request for Comments on Environmental Issues

January 21, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 1278 Replacement Project involving the replacement of 43.4 miles of its existing Line 1278 pipeline by Columbia Gas Transmission Corporation (Columbia) in Northampton, Monroe, and Pike Counties, Pennsylvania.[1] Columbia has indicated that it intends to replace about 10.7 miles of its Line 1278 pipeline in Bucks and Northampton Counties under its blanket certificate issued in Docket No. CP83–76–000. Construction would be done in two phases in 2004 and 2005 as described below. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Columbia provided to landowners. This fact sheet addresses a number of typically asked questions including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

[1] Columbia's application was filed with the Commission under sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Project

Columbia is under mandate from the United States Department of Transportation to replace deteriorated sections of its existing 14-inch-diameter Line 1278. Columbia proposes to replace and upgrade a segment of 43.4 miles of Line 1278, commencing in Northampton County and terminating in Pike County, Pennsylvania. This portion of pipeline would be upgraded to 20-inch-diameter pipeline mostly within the same trench of the existing pipeline on Columbia's existing right-of-way. Additional temporary workspace outside of Columbia's existing right-of-way would be required.

Pursuant to the Pennsylvania Department of Transportation (PENNDOT) relocation of Route 209 (future Route 402) in Marshall's Creek, Monroe County, Pennsylvania, Columbia has been forced to relocate 0.8 mile of its existing right-of-way. The forced relocation (included in the overall 43.4-mile segment) would result in about 6.1 acres of impact. Upon relocation of the pipeline at Route 209, Columbia would abandon the existing right-of-way affected by PENNDOT's project-in-place. PENNDOT would acquire property rights over the affected portions of Columbia's right-of-way and the abandoned pipeline.

Columbia would replace eight 14-inch-diameter valve settings with 20-inch-diameter valve settings, remove a 12-inch-diameter valve setting, and install a new 20-inch-diameter valve setting. The existing 14-inch diameter pig launcher presently located at the Easton Compressor Station would be removed and relocated to the northern terminus of the project at Weber Road for use on Line 1278 northward to the Millrift Valve Station at the Delaware River. A new 20-inch-diameter receiver and a 12-inch-diameter regulator setting would also be installed at the Millrift Valve Station.

Columbia would proceed with construction in four distinct segments. The 0.8 mile relocation at Route 209 would proceed from May through November of 2004 as would 15.1 miles of the replacement in Pike County. From May through November of 2005, Columbia would undertake the replacement of a 21.1 mile segment in Northampton and Monroe Counties and a 6.2 mile segment in Monroe and Pike Counties.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for the Project

It is expected that 478.7 acres would be affected by the replacement project. The project would utilize Columbia's existing 50-foot right-of-way and a 25-foot temporary construction right-of-way. About 23.5 acres of extra workspace would be needed for staging areas, and at road crossings, waterbody and wetland crossings, and steep slopes. About 34.9 acres of access roads would also be needed temporarily, and all but one of the access roads are existing.

The 0.8 mile reroute consisting of 6.1 (included in the above total) acres would be the only new permanent right-of-way acquired by Columbia for this project. The launcher/receiver and regulator setting would require a new fenced lot of about 100-feet by 200-feet at Weber Road at the northern terminus of the project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Public safety.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, Native American tribes, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. This preliminary list of issues may be changed based on your comments and our analysis.

- Crossing through 3.6 miles of the Delaware Water Gap—National Recreation Area.
- Crossing 51 perennial streams.
- Crossing 124 wetlands, including disturbance to 26.3 acres of forested wetlands.
- One federally-listed amphibian specie.
- 172 residences located within 50 feet of the construction work area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 1.

• Reference Docket No. CP04–34–000.

• Mail your comments so that they will be received in Washington, DC on or before February 23, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

SUPPLEMENTARY INFORMATION: Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–128 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 287–009]

Midwest Hydro Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 20, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 287–009.

c. *Date Filed:* April 8, 2002.

d. *Applicant:* Midwest Hydro Inc.

e. *Name of Project:* Dayton Hydroelectric Project.

f. *Location:* On the Fox River near the City of Dayton, in La Salle County, Illinois. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Loyal Gake, Midwest Hydro Inc., 116 State Street, P.O. Box 167, Neshkoro, WI 54960 (920) 293–4628.

i. *FERC Contact:* Tom Dean at (202) 502–6041, *thomas.dean@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice, reply comments due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 23-foot-high, 594-foot-long arch buttress concrete dam; (2) a 200-foot-long earthen embankment; (3) a concrete head gate structure with four 15.5-foot-wide by 9.5-foot-high wooden gates; (4) a 900-foot-long, 135-foot-wide power canal; (5) a 200-acre reservoir with a normal storage capacity of 605 area-feet, at a normal pool elevation of 498.90 mean sea level; (6) a powerhouse containing three generating units with a combined capacity of 3,680 kW; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at

http://www.ferc.gov using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubsribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *www.ferc.gov* and click on ''View Entire Calendar''.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue notice of availability of EA: June 2004.

Ready for Commission decision on the application: August 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–122 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–017 and EL03–216–001]

California Independent System Operator Corporation; Notice of Agenda of Staff Technical Conference

January 21, 2004.

As announced in the Notice of Technical Conference issued on December 16, 2003, the Commission Staff will convene a technical conference on January 28–29, 2004, to discuss with state representatives and market participants in California various substantive issues related to the California Independent System Operator's (CAISO) Revised MD02 proposal, including the flexible offer obligation proposal, the residual unit commitment process, pricing for constrained-output generators, marginal losses, and ancillary services and other market efficiency issues not related to the mitigation of market power. The market power mitigation issues will be discussed at the technical conference proposed to be held in San Francisco, California in early March 2004.

The conference will focus on the six issue areas identified in the agenda, which is appended to this notice. The discussion of each topic on the conference agenda will begin with a short presentation by the Commission Staff to frame the issue, followed by an open discussion amongst all participants. Participants are encouraged to be prepared to discuss the issues substantively.

The conference will begin at 9 a.m. eastern time on both days, and will adjourn at 5 p.m. eastern time on January 29, 2004. The conference will be held in the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The conference is open for the public to attend, and registration is not required.

For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or at *olga.kolotushkina@ferc.gov*.

Magalie R. Salas,

Secretary.

Agenda for January 28–29 Staff Technical Conference

I.Flexible Offer Obligation Proposal [1]

- How will the implementation of this proposal affect day-ahead (DA) and real-time (RT) market timelines?
- To what extent does the Flexible Offer Obligation provide adequate incentive to suppliers to participate in CAISO's markets and provide CAISO with the reliability it needs?
- Explain why, if at all, slow-start units present special circumstances that justify exempting them from the Flexible Offer Obligation requirements. What are the alternatives for a slow-start unit to protect itself from unrecovered start-up and minimum-load costs by bidding into the DA market?

II. Residual Unit Commitment (RUC) Issues [2]

- Energy Procurement Target.
- Why is energy procurement needed if procured capacity can ensure reliability?
- Explain what impacts the procurement of energy could have on the DA market, *e.g.*, discouraging load from bidding.
- Would energy purchased through RUC receive a different price than energy procured from the DA market? Explain.
- Who would pay for energy that was procured but ultimately not needed?
- Treatment of and obligations for imports.
- Explain the extent to which the purchase of only capacity (not energy) gives imports sufficient incentive to acquire the necessary transmission capacity across the ties.
- Rescission of RUC availability payment.
- How does the RUC availability payment differ from a call option?
- How does the RUC availability payment differ from offering operating reserve capacity?
- Netting of start-up/minimum load (SU/ML) costs.
- What are the pros and cons of permitting units that are committed in the DA market to receive payment to cover SU/ML costs in the DA market and retain all revenues for subsequent sales?
- Obligations from commitment in DA market and RUC.
- Explain how, if at all, units committed to supply capacity in RUC are obligated to offer energy in real time. What are the impacts to markets?
- Discussion of use of daily or monthly gas indices in cost-based option for SU/ML costs.

III. Ancillary Services (A/S) [3]

- To what extent should the ISO have well-defined, transparent A/S procurement rules? How much flexibility should the ISO have in determining when to purchase needed A/S? What are the impacts?

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[1] *See* California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2003) (October 28 Order) at P 217–232.

[2] *See* October 28 Order at P 99–130.

[3] *See* October 28 Order at P 79–84.

• Should market participants have the opportunity to buy their A/S position back in the hour-ahead market? What impact would this have on markets and system operators?

IV. Constrained-Output Generators [4]

• Explain when is it appropriate for constrained-output generators to set the market clearing price.

• Explain whether and why different pricing rules between the DA and RT markets may be appropriate.

V. Marginal Losses [5]

• How can the excess revenues created through marginal loss pricing be returned to the appropriate participants without distorting efficient price signals?

• How should entities that self-provide losses be treated?

• Discussion of alternative proposals, including that of FPL Energy, LLC.

VI. Miscellaneous Issues

[FR Doc. E4–121 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003 RT01–86–000, RT01–86–001, RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000,RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000, and RT02–3–000]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al., New York Independent System Operator, Inc., et al., PJM Interconnection, LLC, et al., PJM Interconnection, LLC, ISO New England, Inc., New York Independent System Operator, Inc.; Notice

January 21, 2004.

Take notice that PJM Interconnection, LLC, New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 13, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–119 Filed 1–27–04; 8:45 am]

BILLING CODE 6717–01–P

[4] *See* October 28 Order at P 85–89.

[5] *See* October 28 Order at P 71–78.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0294; FRL–7336–9]

Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment and Risk Management Decision (TRED) for Lactofen; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces availability of and starts a 30–day public comment period for the Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment and Risk Management Decision (TRED) for Lactofen. EPA has reassessed the existing tolerances for lactofen.

DATES: Comments, identified by docket (ID) number OPP–2003–0294, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general but may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the agrochemical industry; pesticide users; and members of the public interested in pesticide use on food. This list 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. If you have any questions regarding the applicability of this action to you or 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–2003–0294. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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

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EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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C. How and To Whom Do I Submit Comments?

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1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0294.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0294. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

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2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA has reassessed the risks associated with current and proposed food uses of the pesticide active ingredient lactofen, reassessed two existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing for comment the resulting Report on FQPA Tolerance Reassessment Progress and Risk Management Decision for lactofen, known as a TRED, as well as a summary, overview, and technical support documents.

Tolerances for lactofen in or on raw agricultural commodities for plants are currently established for the combined residues of lactofen and its associated metabolites containing the diphenyl ether linkage, but will be revised to include only lactofen per se. The two existing tolerances for lactofen have been reassessed and will be lowered from 0.05 ppm to 0.01 ppm. There are currently no tolerances for lactofen in processed commodities or animal commodities, and the available residue data indicate that tolerances for these commodities are not necessary. No maximum residue limits (MRLs) for lactofen have been established or proposed by Codex. Therefore, there are no international compatibility issues with respect to U.S. tolerances.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances lactofen included in this notice.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in TREDs. The Agency therefore is issuing the lactofen TRED as a final decision with a 30–day comment period. All comments received during the next 30 days will be carefully considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

List of Subjects

Environmental protection, pesticides, lactofen, tolerance reassessment.

Dated: January 13, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division.

[FR Doc. 04–1548 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0384; FRL–7337–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient including a new use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0384, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 305–7740; e-mail address: *giles-parker.cynthia@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?

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C. How and to Whom Do I Submit Comments?

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1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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D. How Should I Submit CBI to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient including a new use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Involving a Change Use Pattern

File symbol: 432–RGIO. *Applicant*: Bayer Environmental Science, 95 Chestnut Ridge Road, Montvale, NJ 07645. *Product name*: Fenamidone 500 SC. *Product type*: Fungicide. *Active ingredient*: Fenamidone at 44.4%. *Proposed classification/Use*: For disease control in ornamentals.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 7, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–1377 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0408; FRL–7339–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0408, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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Product Containing an Active Ingredient not Included in Any Previously Registered Product

File symbol: 52991–RT. *Applicant*: Bedoukian Research, Inc., 21 Finance

Drive, Danbury CT 06810–4192. *Product name*: Bedoukian (*Z*)-6-Heneicosen-11-one Technical Pheromone. *Product type*: Pheromone/attractant. *Active ingredient*: (*Z*)-6-Heneicosen-11-one at 94.00%. *Proposed classification/Use*: For incorporation into end-use products, and not for direct treatment of pest.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 8, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–1239 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0015; FRL–7340–1]

Dimethoate; Use Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order, as requested the registrants, for certain uses associated with the manufacturing-use registrations for products containing dimethoate (O,O-Dimethy S-((methylcarbamoyl)methyl phosphodithioate), pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 10, 2003 Notice of receipt of requests from the registrants for cancellation of use on grapes, apples, head lettuce, spinach, chard, broccoli raab, fennel, tomatillo, lespedeza and trefoil on all technical registrations. The cancellations are effective as of the date of this notice. The registrants are permitted to sell or distribute existing stocks for 1–year after the effective date of this cancellation order. Other persons are permitted to use existing stocks only to produce products that are not labeled for the above uses.

DATES: This order is effective January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8180; e-mail address: *dobak.pat@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–2003–0263. 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.A.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 cancellation, as requested by the dimethoate technical registrants, of the following crop uses from all dimethoate technical products registered under section 3 of FIFRA: Apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza and trefoil.

A. Requests for Voluntary Cancellations

The manufacturing-use product registrations for which cancellation was requested are identified below in Tables 1 and 2. The Agency is affording the 1–year period from this cancellation date to allow registrants to exhaust existing stocks of products with labels that still include the uses canceled in this notice. The Agency reserves the right to propose shorter existing stocks time periods for dimethoate products in future **Federal Register** Notices and to include end-use products as well.

TABLE 1.—MANUFACTURING-USE PRODUCTS SUBJECT TO CANCELLATION OF CERTAIN USES

Company Name	Product Name	Product Registration Number
Cheminova	Chemethoate Technical	4787–7
Drexel	Drexel Dimethoate Technical	19713–209 and 19713–525
Gowan	Gowan Dimethoate Technical	10163–211
Micro Flo	Dimethoate Technical	51036–279

Table 2 of this unit includes the name and product for the registrant that requested cancellation of their technical product altogether:

TABLE 2.—TECHNICAL PRODUCT SUBJECT TO CANCELLATION

Company Name	Product Name	Product Number
BASF Corporation	Perfekthion Manufacturers' Concentrate	7969–32

BASF is continuing to support their dimethoate end-use products.

B. Comments Received on Basis for this Action

In the notice of receipt of requests for voluntary cancellation (68 FR 53371, September 10, 2003) (FRL–7321–2), the Agency stated that the dimethoate uses subject to the requests for cancellation contributed significantly to dietary risk, and that cancellation was necessary in order to address dietary risk from dimethoate. The Agency would like to clarify that these statements are the Agency's, and that the registrants' state that their requests for voluntary cancellation were made as business decisions and did not acknowledge any dietary risks for dimethoate.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of the dimethoate uses on apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza and trefoil for the product registrations identified in Table 1 of Unit II.A. In addition, also pursuant to section 6(f), EPA approves the requested cancellation of the dimethoate manufacturing-use product registration identified in Table 2 of Unit II.A. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit V. will be considered a violation of FIFRA.

EPA is not at this time proposing to revoke existing tolerances issued pursuant to the Federal Food, Drug, and Cosmetic Act for residues of dimethoate in or on apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza, and trefoil. This is because registrations authorizing such uses are still in effect for certain end use products containing dimethoate.

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. The Administrator may approve such a request after a public comment period. Notice of receipt of the cancellation requests was published on September 10, 2003 (68 FR 53371). The registrants have waived the 180–day comment period, and the 30–day comment period provided in section 6(f)(1)(B) has ended.

V. Provisions for Disposition of Existing Stocks

For purposes of this cancellation order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as 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. See 56 FR 29362 (June 26, 1991). The existing stocks provisions of this cancellation order are as follows:

1. *Distribution or sale*. It is unlawful for any person to distribute or sell existing stocks of any product identified in Table 1 that is labeled for use on apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza and trefoil, or any product identified in Table 2, except:

i. Registrants identified in Tables 1 and 2 may sell and distribute existing stocks of their own products until January 28, 2005.

ii. Any person may ship such existing stocks for the purpose of export consistent with FIFRA section 17 or for proper disposal in accordance with applicable law.

2. *Use for producing other products*. It is unlawful for any person to use existing stocks of any product identified in Table 1 or 2 to produce any product labeled for use on apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza or trefoil. Existing stocks of products identified in Tables 1 and 2 may be used to produce products that are not labeled for use on apples, grapes, spinach, head lettuce, chard, broccoli raab, fennel, tomatillo, lespedeza or trefoil.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 8, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–1824 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–293; FRL–7337–1]

Sodium Acifluorfen RED; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces availability of and starts a 30–day public comment period for the Reregistration Eligibility Decision (RED) for the pesticide active ingredient sodium acifluorfen.

DATES: Comments, identified by docket ID number OPP–2003–293, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005 e-mail address: *scheltema.christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general but may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the agrochemical industry; pesticide users; and members of the public interested in pesticide use on food. This list 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. If you have any questions regarding the applicability of this action to you or 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–2003–293. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–293. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–293. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By mail. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–293.

3. By hand delivery or courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–293. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

For the herbicide sodium acifluorfen, the Agency is announcing the availability of the reregistration eligibility decision (RED) document and supporting technical documents. EPA has assessed the risks associated with the use of sodium acifluorfen, reassessed the tolerances for sodium acifluorfen, and reached a reregistration eligibility decision. The Agency has determined that all currently registered uses of sodium acifluorfen are eligible for reregistration, provided that all the conditions identified in the RED document are satisfied, including the implementation of risk mitigation measures through label amendments. The RED document also describes the tolerance reassessment decision for sodium acifluorfen.

The sodium acifluorfen RED and supporting technical documents were developed using a public participation process designed to increase transparency and maximize stakeholder involvement and to provide numerous opportunities for public comment. The Agency is therefore issuing this RED for sodium acifluorfen as a final document with a 30–day public comment period, which is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. Unless substantive information is received during the comment period, which indicates that the Agency's assessments must be refined and that additional risk mitigation is warranted, this RED will be considered to be a final decision.

List of Subjects

Environmental protection, Pesticides, Sodium acifluorfen.

Dated: January 13, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–1549 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0375; FRL–7337–3]

Fenamidone; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0375, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0375. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0375. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0375. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0375.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0375. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used thatsupport your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 5, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

EPA has received a pesticide petition (1F6300) from Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of fenamidone, 4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-,(S)-, and its metabolites (RPA 412708), (RPA 412636), and (RPA 410193) in or on the raw agricultural commodity vegetable, tuberous and corm, subgroup 1C at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

In the **Federal Register** of January 4, 2002 (67 FR 592) (FRL–6812–2) EPA issued a notice of filing of Pesticide Petition (1F6300) from Bayer Crop Science (formerly Aventis Crop Science) at the above address proposing to amend 40 CFR part 180 by establishing tolerances for fenamidone and its metabolites in or on various raw agricultural commodities. EPA has received an amended petition to include the above raw agricultural commodities subgroup. This notice contains information submitted in addition to that contained in the January 4, 2002 notice.

Bayer CropScience

PP 1F6300

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of fenamidone (RPA 407213) was evaluated in four distinct crops (lettuce, tomatoes, potatoes, and grapes) and is adequately understood. In all cases, the primary residue was the parent compound. The only significant metabolite was (RPA 410193) (17% of the total radioactive residue (TRR) in grapes, 9% of the total radioactive residue (TRR) in tomatoes, <1% of the total radioactive residue (TRR) in potatoes (haulm or tubers). RPA 412708 and RPA 412636 were minor metabolites reported in the lettuce and potato studies and may account for part of the unidentified residue reported in the grape and tomato metabolism studies.

2. *Analytical method.* Although, residue levels approaching the proposed tolerances are unlikely, independently validated enforcement methods are available for determining residues of fenamidone and relevant metabolites. Residues are first extracted from the crop matrix by blending or shaking with a mixture of acetonitrile and water. After filtration, an aliquot of the extract is rotary evaporated to near dryness, then diluted with water. Cleanup is accomplished on a HR-P polymeric solid phase extraction (SPE) cartridge and an amino SPE cartridge. Residues are quantified by HPLC with tandem mass spectrometric detection (LC/MS/MS). The method limits of quantification (LOQ) are 0.02 ppm for fenamidone, and its metabolites (RPA 412636), (RPA 412708), and (RPA 410193) in potato tubers and processed fractions, tomatoes and processed fractions, cucumbers, squash, cantaloupes, head and leaf lettuce, onions, spinach, and wheat raw agricultural commodities and processed fractions.

3. *Magnitude of residues.* Eighteen residue trials were conducted with fenamidone on potatoes in 1999. EXP 10623A, a suspension concentrate containing 500 grams (g) fenamidone per liter, was applied as four broadcast applications of 0.268 lb active ingredient/Acre (a.i./A) 300 g a.i./ha each or six broadcast applications of

0.178 lb a.i./A 200 g a.i./ha each, for a maximum seasonal use rate for 1.068 lb a.i./Acre 1,200 g a.i./ha). Applications were made approximately 5 days apart. The target pre-harvest interval (PHI) was 14 days. No quantifiable residues of fenamidone or metabolites were found in any tuber sample above the LOQ (0.02 ppm). The extent of potential residue concentration in processed potato fractions was estimated by processing potatoes after application of fenamidone at 5X the maximum seasonal use rate. The potato tuber or the potato chips despite the exaggerated application rated. Only parent fenamidone (RPA 407213) residues were found in the wet peel at levels of 0.043 to 0.049 ppm with an estimated concentration factor of 4.6. Trace residues of two fenamidone metabolites were found only in the potato flake fraction, RPA 412708 at 0.029 to 0036 ppm and RPA 412636 at 0.026 ppm. When corrected to account for the exaggerated application rate, residue levels of processed fractions were less than the RAC LOQ of 0.02 ppm.

B. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for fenamidone has been conducted. The acute oral toxicity study in rats resulted in a lethal dose $(LD)_{50}$ of <5,000 milligrams/kilogram (mg/kg) (males) and >2,028 mg/kg (females). The acute dermal toxicity study in rats resulted in a LD_{50} of >2,000 mg/kg for both males and females. The acute inhalation study in rats resulted in a lethal concentration $(LC)_{50}$ of >5 milligrams/Liter (mg/L) for males and females. Fenamidone was not irritating in the primary eye irritation or primary dermal irritation studies. The dermal sensitization study in guinea pigs was negative. In an acute neurotoxicity study in rats, fenamidone was not neurotoxic at doses up to the limit dose of 2,000 mg/kg. The no observed adverse effect level (NOAEL) was 500 mg/kg for males and 125 mg/kg for females.

2. *Genotoxicity.* Mutagenicity studies conducted include: A *Salmonella typhimurium* reverse mutation assay (negative at the limits of cytotoxicity and solubility with and without activation); *in vitro* unscheduled DNA synthesis test in rat liver (negative at the limits of cytotoxicity); *in vitro* chromosome aberrations test in human lymphocytes (positive at the limits of cytotoxicity and solubility); TK+/- mouse lymphoma assay (positive with activation, negative without); *in vivo* mouse micronucleus test (negative with toxicity at 2,000 mg/kg); and an *in vivo* unscheduled DNA synthesis assay in the rat (negative at up to 2,000 mg/kg with toxicity at the high dose level). Based on the data cited above, fenamidone is not considered mutagenic.

3. *Reproductive and developmental toxicity.* A teratology study was conducted with rats administered (orally) fenamidone on gestation days 6–15 at dose levels of 0, 25, 150, or 1,000 mg/kg/day. High dose dams had significantly decreased body weight and food consumption. High dose fetal body weights were less than controls and correlated with slightly delayed skeletal ossification secondary to maternal toxicity. The NOAEL for maternal and developmental toxicity is 150 mg/kg/day. The lowest observed adverse effect level (LOAEL) was 1,000 mg/kg/day. A teratology study was conducted with rabbits administered (orally) fenamidone on gestation days 6–19 at dose levels of 0, 10, 30, or 100 mg/kg/day. The maternal NOAEL was 10 mg/kg/day. The maternal LOAEL was 30 mg/kg/day, based on increased maternal liver weights at 30 and 100 mg/kg/day. Fenamidone demonstrates no reproduction study was conducted with rats administered (orally) in the diet fenamidone at dose levels of 0, 3.9, 63.8, 328.3 mg/kg/day (males) and 0, 5.15, 84.4, 459.6 mg/kg/day (females). The NOAEL for maternal and offspring toxicity was 5/15 mg/kg/day. The maternal NOAEL was based on decreased body weight and food consumption. The pup NOAEL is based on F1 pup body weight decrease. The reproductive NOAEL was >328.3 mg/kg/day (males) and >459.6 mg/kg/day (females). Fenamidone is not considered a reproductive toxicant at non-maternally toxic dose levels and shows no evidence of endocrine effects.

4. *Subchronic toxicity.* In a 13–week range-finding study, fenamidone was administered in the diets of male and female rats at dose levels of 0, 4.05, 10.41, 68.27, 343.93 mg/kg/day to males and 0, 4.81, 12, 83.33, 380.68 mg/kg/day to females. The NOAEL is 68.27 mg/kg/day (males) and 83.33 mg/kg/day (females) and the LOAEL is 343.93 mg/kg/day for males and 380.63 mg/kg/day for females based on adaptive liver changes at 68.27 mg/kg/day and increased liver and thyroid weights at the highest dose tested. In a 13–week subchronic feeding study, fenamidone was administered in the diet to mice at dose levels of 0, 11.33, 44.5, 220.2, 1,064.3 mg/kg/day to males and 0, 13.7, 54.1, 273.9, 1,375.2 mg/kg/day to females. The NOAEL is 44.5 mg/kg/day (males and 54.1 mg/kg/day (females) and the LOAEL is 220.2 mg/kg/day (males) and 273.9 mg/kg/day (females) based on 14% increase in liver weight at the high dose. In a 28–day subchronic dermal study, fenamidone was applied to skin of male and female New Zealand white rabbits at doses of 0 or 1,000 mg/kg/day for 6 hours/day, 5 days/week. Treatment produced a slight decrease in food consumption 8–10%) and body weight (6%) in males only. In a 13–week study, fenamidone was administered in the diets of male and female dogs at 0, 10, 100, and 500 mg/kg/day. Based on clinical symptoms at the high dose, the NOAEL is 100 mg/kg/day and the LOAEL is 500 mg/kg/day. In a subchronic neurotoxicity study, there was no evidence of neurotoxicity when fenamidone technical was administered to rats for 13 weeks at dosage levels up to 5,000 ppm (395.6 and 414.2 mg/kg/day), the maximum tolerance dose (MTD). The NOAEL for the study was 1,000 ppm (equivalent to 74.2 and 83.4 mg/kg/day).

5. *Chronic toxicity.* A 1–year oral study was conducted with dogs administered fenamidone at dose levels of 0, 10, 100, 1,000 mg/kg/day in capsules. The NOAEL is 100 mg/kg/day for both sexes, based on significantly increased liver weights and biliary hyperplasia in the high dose. The LOAEL is 1,000 mg/kg/day. A 2–year combined chronic toxicity/carcinogenicity study was conducted with fenamidone administered in the diet to rats at dosed of 0, 2.83, 7.07, 47.68, 260.13 mg/kg/day (males) and 0, 3.63, 9.24, 60.93, 335.10 mg/kg/day (females). The NOAEL for systemic toxicity s 2.83 mg/kg/day (males) and 3.36 mg/kg/day (females). The LOAEL is 7.07 mg/kg/day (males and 9.24 mg/kg/day (females). No statistically significant, linear dose response was observed for any tumor incidence. A 104–week combined carcinogenicity study in mice was conducted with mice administered fenamidone in the diet at dose levels of 0, 9.5, 47.5, 535.5, 1,100.2 mg/kg/day (males) and 0, 12.6, 63.8, 680.5, 1,393.2 mg/kg/day (females). The NOAEL was 9.5 mg/kg/day (males) and 12.6 mg/kg/day (females). The LOAEL for carcinogenicity was 47.5 mg/kg/day (males) and 63.8 mg/kg/day (females). The NOAEL is based on non-neoplastic liver changes and decreased body weight gain at the top two dose levels. Fenamidone demonstrates no potential for carcinogenic effects in mammals.

6. *Animal metabolism.* Metabolism studies conducted with goat and hen demonstrate that fenamidone is rapidly metabolized and excreted. Residue levels in edible animal tissues (meat, milk and eggs) are negligible and do accumulate in those tissues. The metabolic pathway proceeds via

cleavage of the amino-phenyl group and the thiomethyl group with further metabolism by hydroxylation. There is also evidence that glucuronide and sulfate conjugates are formed. A single low dose (3 mg/kg), a single high dose (300 mg/kg) and a low dose 3 mg/kg administered for 15 consecutive days were fed to rats. Fenamidone was relatively well absorbed at a nominal dose of 3 mg/kg in both sexes and intensively metabolized by phase 1 oxidation, reduction and hydrolysis and 2 conjugation reactions. The elimination of radiolabeled fenamidone was relatively rapid with the majority of the administered dose being excreted via the biliary route (for the low dose experiments). The comparison of the levels of radioactivity recovered in bile kinetic and absorption, distribution, metabolism and excretion (ADME) studies suggested that a part of the radioactivity excreted via the bile could be reabsorbed and subsequently re-excreted via the urine. High levels of radioactivity measured in blood samples from the tissue kinetics also supported this hypothesis. At the high dose level fenamidone was not very well absorbed; some 50–60% of the radioactivity was present as parent compound in the feces. Radioactivity was widely distributed in the tissues with predominance in the thyroids, blood, liver, kidneys, fat and pancreas. Fenamidone is therefore expected to be rapidly and extensively metabolized and excreted in mammals.

7. *Metabolite toxicology.* The major dietary metabolites of fenamidone, (RPA 412708), (RPA 410193) and (RPA 412636), were evaluated for mammalian toxicity in an acute oral toxicity study, a 90–day repeated dose study and in genotoxicity tests. The metabolites are considered to be of comparable toxicity to the parent fenamidone.

8. *Endocrine disruption.* Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of fenamidone is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Fenamidone is registered for use on head and leaf lettuce, and has been proposed previously to support uses on the bulb vegetable crop group, potatoes, and the cucurbit crop group. Wheat tolerances were also proposed to cover any potential plant-back residues. An import tolerance for wine grapes was also proposed to cover potential residues in imported wine. There are no residential uses proposed for fenamidone. Therefore, the aggregate exposure would consist of any potential exposures to fenamidone residues from the above food crops, from drinking water, and from imported wine. The acute reference dose (aRfD) of 0.13 mg/kg/day is based on a NOAEL of 125 mg/kg/day from the neurotoxicity study in rat and a 10X database uncertainty factor (UF) recently applied by the Agency for lack of a developmental neurotoxicity study. The chronic reference dose (cRfD) of 0.002 mg/kg/day from the 2–year rat chronic study and the UF of 10X.

i. *Food.* Acute and chronic dietary analyses were conducted to estimate exposure to potential fenamidone residues in/on the crops and crop groups of tuberous and corm vegetables, head and leaf lettuce, onions and bulb vegetables, cucurbits and tomatoes as target crops, and wheat as a rotational crop. Tier III analysis were conducted for both the acute and chronic scenarios using the DEEM™ Exponent, Inc. software. The acute dietary exposure estimates at the 95th percentile of exposure for the U.S. population was 5.5% of the acute Reference Dose (aRfD). The U.S. population subgroup with the highest exposure was toddlers 1–2 years at 9.3% of the aRfD. Chronic dietary exposure estimates from potential residues of fenamidone for the U.S. population was 8.0% of the chronic RfD. The sub-population with the highest exposure was children 1–6 years at 10–2% of the RfD.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments, including water models such as SCI-GROW, FIRST PRZMS/EXAMS, and available monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface water and ground water and the highest levels are assumed to be the drinking water residue. In the case of fenamidone, monitoring data do not exist, therefore, SCI-GROW and FIRST were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for acute and chronic exposure for all adults and children exceed the modeled drinking water estimated concentration (DWEC). The acute DWLOC values are 4,301 parts per billion (ppb) for the general population and 1,179 ppb for infants and children, compared to the worst-case acute DWEC of 50 ppb. The chronic DWLOC values are 27 ppb for the general population and 29 ppb for infants and children, compared to a worst-case chronic DWEC of 11 ppb. These drinking water levels of comparison are based on conservative dietary (food) exposures and are typically expected to be much higher under actual use scenarios.

2. *Non-dietary exposure.* Fenamidone is not registered for residential uses (food or non-food), thereby eliminating any potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. There is no available data to determine whether fenamidone 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, fenamidone 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 fenamidone has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above, based on the completeness and reliability of the toxicity data, it is concluded that, the dietary exposure from the proposed uses of fenamidone will utilize at most 8.0% of the aRfD or cRfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Drinking water levels of comparison based on the dietary and aggregate 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. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure of food and drinking water to residues of fenamidone.

2. *Infants and children.* In consideration of the toxicology data base as discussed above, EPA has determined that there is no extra

sensitivity of infants and children, and therefore, the default FQPA safety factor can be removed. However, the Agency has applied a data base uncertainty factor of 10X to account for the current lack of developmental neurotoxicity study. Using the assumptions and data described in the exposure section above, the percent of the aRfD and cRfD that will be used for exposure to residues of fenamidone in food for infants and children (the most highly exposed subgroups) is 10.2%. There are no non-dietary concerns for infants and children. As with adults, drinking water levels of comparison are higher than the worst-case drinking water estimated concentrations and are expected to use well below 100% of the reference dose.

[FR Doc. 04–1238 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0407; FRL–7339–6]

Cyfluthrin; Notice of Filing of Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0407, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal Production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0407. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0407. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0407. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0407.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0407. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by Bayer CropScience and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

Rutgers State University

PP 1E6318, PP 1F6290, PP 2F6445, PP 2F6479, PP 3E6776, PP 3E6583

EPA has received pesticide petitions (PP 1F6290, PP 2F6445, PP 2F6479) from Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709 and pesticide petitions (PP 1E6318, PP 3E6583, PP 3E6776) from the Interregional Research Project Number 4 (IR-4), Technology Centre and Rutgers State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.436 by establishing a tolerance for residues of cyfluthrin (cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on raw agricultural commodities as follows:

1. PP 1F6290 proposes tolerances for tree nuts, Crop Group 14 at 0.01 parts per million (ppm), almond hulls at 1.0 ppm, and pistachio at 0.01 ppm.

2. PP 1E6318 proposes tolerances for tuberous and corm vegetable subgroup at 0.01 ppm.

3. PP 2F6445 proposes tolerances for wheat forage, wheat hay and wheat straw at 5.0 ppm, wheat shorts at 3.5 ppm, leafy vegetable group at 6.0 ppm, leafy brassica greens subgroup at 7.0 ppm, fruiting vegetable group at 0.5 ppm, cucurbit vegetable crop group at 0.10 ppm, pome fruit group at 0.10 ppm, pome fruit wet pomace at 0.30 ppm, and stone fruit group at 0.30 ppm.

4. PP 2F6479 proposes tolerances for grape at 0.8 ppm, grape, raisin at 3.5 ppm, peanut at 0.01 ppm, and peanut, hay at 6.0 ppm.

5. PP 3E6583 proposes tolerances for turnip greens at 7 ppm.

6. PP 3E6776 proposes tolerances for grass forage at 6 ppm, grass hay at 8 ppm, and pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology using GC/EC detection is available for enforcement purposes.

3. *Magnitude of residues.* Complete residue data are available for cyfluthrin on the crops and crop groupings in PP 1F6290, PP 2F6445, and PP 2F6479. The data support the requested tolerances.

Tuberous and corm vegetable subgroup in PP 1E6318. IR-4 received a request from the Agricultural Experiment Station of Mississippi for the use of cyfluthrin on sweet potato to control numerous insect pests. Cyfluthrin is already registered on potato with a tolerance of 0.01 ppm, and potato is the representative commodity of the tuberous and corm vegetable subgroup, 1C. Since sweet potato is a member of subgroup 1C, IR-4 is proposing that EPA references the registrant's potato data to establish a tolerance for the subgroup.

Turnip greens in PP 3E6583. IR-4 received a request from the Agricultural Experiment Stations of Arkansas, Oklahoma, and Tennessee for the use of cyfluthrin on turnip greens to control numerous insect pests. A tolerance of 7 ppm has been established for cyfluthrin on mustard greens. Mustard greens are the sole representative crop for Crop Subgroup 5B:

Leafy Brassica greens. The EPA HED Chemistry Science Advisory Council has approved the inclusion of turnip greens in Crop Subgroup 5B, thus the data on mustard greens are sufficient to establish a tolerance on turnip greens.

Grasses and dried shelled pea and bean (except soybean subgroup 6C) in PP 3E6776. IR-4 has received requests from the state of California for the use of cyfluthrin on grass. To support this .request, magnitude of residue data were collected from four supervised crop field trials with grass at application rates of 0.024 0.03 lb a.i./A with pre-harvest interval(s) of 0 days for grass forage and 6–7 days for hay. The results from these trials show that the residues of cyfluthrin in grass forage ranged from 0.24 ppm to 4.8 ppm after a total application rate of 0.024 0.03 lb a.i./A and a PKI of 0 days, and the residues of cyfluthrin in grass hay ranged from 0.62 ppm to 6 ppm after a total application rate of 0.024 0.03 lb a.i./A and a pre-harvest interval (PHI) of 6–7 days. The nature of the residues of cyfluthrin are adequately understood and an acceptable analytical method is available for enforcement purposes. Data on dry peas and beans were submitted to EPA in PP 0E6075; however, the tolerance action included dry pea only. The data volume that contained dry bean data was only reviewed for the dry pea data that it contained. IR-4 requests that this data volume be reviewed for the dry bean data it contains and that these data, combined with the established dry pea tolerance, be used to set a subgroup 6C tolerance for cyfluthrin.

B. Toxicological Profile

1. *Acute toxicity.* There is a full battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II for the active ingredient.

2. *Genotoxicty.* Based on the results of a complete genotoxicity data base, there is no evidence of mutagenicity activity in a battery of studies, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary(CHO)/HGPRT assay), a structural chromosome aberration assay (CHO/sister chromatid exchange assay), and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* A developmental toxicity study in rats indicated a maternal no observed adverse effect level (NOAEL) of 3 milligrams/kilogram body weight day (mg/kg bwt/day) based on reduced body weight gain and food consumption at 10 mg/kg bwt/day. The developmental NOAEL was 10 mg/kg bwt/day, based on reduced fetal body weights and increased skeletal variations at the maternally toxic dose of 40 mg/kg bwt/day. An oral developmental toxicity study in rabbits with a maternal NOAEL of 20 mg/kg bwt/day and a maternal lowest observed adverse effect level (LOAEL) of 60 mg/kg bwt/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOAEL of greater than 180 mg/kg bwt/day was also observed in this study. A two-generation reproduction study in rats indicated parental and offspring NOAELs of 3.0 mg/kg bwt/day, based on reductions in body weight and food consumption in the parents and course tremors and decreased mean litter weights in the offspring at 9.0 mg/kg bwt/day. The NOAELs were confirmed in a supplemental two-generation study.

4. *Subchronic toxicity.* In a 28–day oral gavage study in rats, cyfluthrin demonstrated a NOAEL of 20 mg/kg bwt/day, based on clinical signs of

neurotoxicity, decreased body weight gain and changes in liver and adrenal weights at 80 and 40 mg/kg bwt/day, respectively. In a 90–day feeding study in rats, the resulting NOAEL was 9.5 mg/kg bwt/day, based on decreased body weight gain, gait abnormalities, skin lesions and mortality seen at 37.5 mg/kg bwt/day. A 6–month toxicity feeding study in dogs established a NOAEL of 5 mg/kg bwt/day. The LOAEL was 15 mg/kg bwt/day based on clinical signs of neurotoxicity and gastrointestinal disturbances.

Two subchronic inhalation studies were conducted with cyfluthrin. In the first study, cyfluthrin was administered via inhalation for 5 days per week for 3 weeks. The resulting NOAEL was 1.4 mg/m^3, based on treatment-related behavioral effects, body weight decreases and organ weight changes at 10.5 mg/m^3. In the second study cyfluthrin was administered via inhalation for 13-weeks. The resulting NOAEL was 0.09 mg/m^3, based treatment-related behavioral effects in females and increased urinary protein in males at 0.71 mg/m^3.

5. *Neurotoxicity.* An acute neurotoxicity study in rats was conducted using beta-cyfluthrin. The NOAEL for this study is 2 mg/kg, based on clinical signs, changes in FOB parameters and decreases in motor activity noted at 10 mg/kg. In a subchronic neurotoxicity study with beta-cyfluthrin the resulting NOAEL was 8 mg/kg, based on clinical signs, changes in FOB parameters, and slightly decreased body weight gain and food consumption. There is no indication of delayed neurotoxicity as a result of exposure to cyfluthrin.

6. *Chronic toxicity.* A 12–month chronic feeding study in dogs established a NOAEL of 2.4 mg/kg bwt/day (males) and 3.6 mg/kg bwt/day (females). The LOAEL for this study is established at 11 mg/kg bwt/day, clinical signs, gait abnormalities and abnormal postural reactions in males and females. A 24–month chronic feeding/carcinogenicity study in rats demonstrated a NOAEL of 2.6 mg/kg bwt/day and LOAEL of 11.6 mg/kg bwt/day, based on decreased body weights. A 24–month carcinogenicity study in mice was conducted. The NOAEL was 31.9 (males) and 140.6 (females) mg/kg/bwt/day. The LOAEL was 114.8 mg/kg bwt/day (males) based on ear skin lesions and reduced body weight gains, and 309.7 mg/kg bwt/day (females) based on clinical signs, macroscopic and microscopic pathology findings and reduced body weights, body weight gains, and food consumption. Under the conditions of these studies, there was no evidence of carcinogenic potential.

7. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

8. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

9. *Endocrine disruption.* There is no evidence of endocrine effects in any of the studies conducted with cyfluthrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* The insecticide cyfluthrin has uses on food crops in agriculture and also non-dietary uses for homeowners. Aggregate exposure for cyfluthrin should consider dietary exposure, both food and drinking water and non-dietary exposure both applicator and postapplication exposure. For the dietary exposure an acute Population Adjusted Dose (PAD) of 0.02 mg/kg bwt/day was selected using an uncertainty factor of 100 based on the acute neurotoxicity study. A chronic PAD of 0.024 mg/kg bwt/day was based on the chronic toxicity test in dogs with an uncertainty factor of 100.

i. *Food.* Chronic and acute dietary exposure estimates resulting from the above listed proposed and pending uses and the registered uses of cyfluthrin are well within acceptable limits for all sectors of the population. Potential dietary exposures from food were estimated using the Dietary Exposure Evaluation Model (DEEM™) software system (Exponent, Inc.) and the 1994-96 and 1998 USDA consumption data. For the chronic analysis, mean residue values were calculated from the appropriate field trial studies conducted for cyfluthrin and submitted as part of the cyfluthrin petitions. For the acute analysis, the entire distribution of field trial residue values was used for non-blended and partially blended commodities and the mean value used for blended commodities. Processing factors were obtained from GLP processing studies for the appropriate commodities. Percent crop treated values were obtained from Doane Market Research Data for registered crops, using the mean value for the chronic analysis and the maximum value of the last 3 years for the acute analysis. Percent crop treated values for pending and proposed crops were based on Bayer CropScience market projections at market maturity. Using these data and assumptions for the chronic analysis, the most highly exposed subpopulation was children 1–2 years utilizing 5.4% (0.001288 mg/kg bwt/day) of the chronic PAD. The U.S. population utilized 1.5% (0.00037 mg/kg bwt/day) of the chronic PAD. For the acute analysis the most highly exposed sub-population was again children 1–2 years at 52.1% (0.010427 mg/kg bwt/day) of the acute PAD and the U.S. population at 34.8% (0.006952 mg/kg bwt/day) of the acute PAD. Actual exposures are likely to be much less, because of the many conservative assumptions incorporated in this analysis.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as SCI-GROW for potential ground water exposure concentrations, and FIRST and/or PRZMS/EXAMS for surface water exposure concentrations, and monitoring data. If monitoring data are not available, then the models are used to predict potential residues in surface water and ground water and the highest is assumed to be the drinking water residue. In the case of cyfluthrin, monitoring data do not exist; therefore, SCI-GROW and FIRST were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for chronic exposure for all adults and toddlers exceed the drinking water estimated concentration (EDWC) from the models. The chronic DWLOC for adults is 830 ppb. The chronic DWLOC for children 1–2 years is 239 ppb. The chronic EDWC for the worst case chronic scenario is 0.16 parts per billion (ppb) (FIRST). The acute DWLOC for adults is 467 ppb and for children 1–2 years is 96 ppb. The maximum acute EDWC from modeling is 2 ppb (FIRST). There is no contribution from ground water exposure as modeled by SCI-GROW.

2. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of FIFRA as amended by the Food Quality Protection Act of 1996 non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a ''worst case'' scenario. For the flea control

infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose no observed effect level (NOEL). Results for each potential exposed subpopulation (adults, children 1–6 years, and infants <1 year) were compared to the systemic absorbed dose NOEL for cyfluthrin to provide estimates of margins of exposure (MOE). The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,700, and 2,500 for adults, children 1–6 years, and infants (<1 year), respectively. The aggregate MOE for adults is approximately 3,700 and the MOEs for infants and children exceed 2,400. The non-dietary methods used in the analyses can be characterized as highly conservative due to the conservatism inherent in the calculation procedures and input assumptions. An example of this is the conservatism inherent in the jazzercise methodology's over-representation of residential post-application exposures. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the Food Quality Protection Act of 1996 for the current label uses. The additional use of cyfluthrin on the proposed new uses will have no impact on the analysis for non-dietary exposure.

D. Cumulative Effects

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6) and other EPA publications pursuant to FQPA.

E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of cyfluthrin will utilize at most 1.5% of the chronic PAD for the U.S. population. The acute dietary exposure to cyfluthrin will utilize at most 34.8% of the acute PAD. The actual exposure both acute and chronic is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Drinking water levels of comparison based on the dietary and aggregate exposures are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the PAD, if they occur at all. Large margins of safety exist for the non-dietary and aggregate exposure. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water, and non-dietary) to residues of cyfluthrin.

2. *Infants and children.* The relevant toxicity studies as discussed in the toxicology section above show no extra sensitivity of infants and children to cyfluthrin; therefore, the FQPA safety factor can be removed. Using the assumptions and data described in the exposure section above, the percent of the chronic PAD that will be used for exposure to residues of cyfluthrin in food for children 1–2 years (the most highly exposed sub-population) is 5.4%. Infants utilize 1.2% (0.000056 mg/kg bwt/day) of the chronic PAD. For the acute assessment, children 1–2 years utilize 52.1% of the acute PAD and infants utilize 34.5% of the acute PAD. As in the adult situation, drinking water levels of comparison are higher than the worst case drinking water estimated concentrations and are expected to use well below 100% of the PAD, if they occur at all. As with adults, large margins of safety exist for the non-dietary and aggregate exposure for infants and children. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of cyfluthrin.

F. International Tolerances

There are no Codex maximum residue levels established for cyfluthrin on the commodities proposed in these petitions.

[FR Doc. 04–1240 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0372; FRL–7335–9]

Tebufenozide; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0372, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joseph M. Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6411; e-mail address:*tavano.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0372. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0372. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0372. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0372.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0372. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 5, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroSciences and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences

PP 7F4824

EPA has received a pesticide petition (PP 7F4824) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to reestablish the time-limited tolerance for indirect or inadvertent residues of tebufenozide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-4-(hydroxyethyl) benzoyl benzoyl in or on the raw agricultural commodity foliage of legume vegetables at 0.1 parts per million (ppm), forage, fodder, hay and straw of cereal grains at 0.5 ppm, grass forage, fodder and hay at 0.5 ppm, and forage, fodder, straw and hay of nongrass animals feeds at 0.5 ppm. Rohm and Haas Company requested these tolerances under the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. A Notice of Filing was submitted and published in the **Federal Register** of July 2, 1999 (64 FR 35999) (FRL–6085–6). Based on the data submitted by Rohm and Haas Company, the Agency determined that only time-limited tolerances for these residues could be established. The final rule was published on October 21, 1999 (64 FR 56690; FRL–6382–6) with the time-limited tolerances expiring on September 30, 2003. To establish permanent tolerances, 12 additional trials were requested to establish the requested tolerances in cereal grains and legumes for a 30–day plantback interval. Rohm and Haas committed to fulfill these data gaps. The data were submitted to the Agency on March 25, 2003. An extension of the tolerance which expired September 30, 2003 is needed to allow for Agency review of the additional rotational crop data. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of tebufenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of October 21, 1999 (64 FR 56690) (FRL–6382–6).

2. *Analytical method*. Adequate enforcement methods are available for determination of tebufenozide in rotational crops. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of October 21, 1999 (FR 64 56690). Dow AgroSciences has also submitted method validation/concurrent recovery studies for a proposed enforcement method. The high performance liquid chromotography/mass spectroscopy (HPLC/MS) method (GRM 02.20) is to be

used for determining residues of tebufenozide in/on rotated crops.

3. *Magnitude of residues.* Twelve field rotation crops residue trials were conducted and residues of tebufenozide and its metabolite were measured. The requested tolerances are adequately supported.

B. Toxicological Profile

The toxicological profile and endpoints for tebufenozide which supports this petition to reestablish time-limited tolerances were previously published in the **Federal Register** of October 21, 1999 (64 FR 56690).

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population subgroups to residues of tebufenozide. These analysis cover all registered crops, as well as, uses pending with the Agency, active and proposed Section 18 uses, and proposed IR–4 minor uses. There are no registered residential nonfood uses of tebufenozide.

i. *Food.*—a. *Acute exposure and risk.* 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. Neither neurotoxicity nor systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 milligrams/kilogram (mg/kg). No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day limit-dose during gestation to pregnant rabbits. This risk is considered to be negligible.

b. *Chronic exposure and risk.* In conducting a chronic dietary risk assessment, reference is made to the conservative assumptions made by EPA: tebufenozide time-limited tolerances (64 FR 56690, October 21, 1999), tolerance level residues, and some percent crop tested (Tier 2). The analysis was determined using Dietary Exposure Evaluation Model (DEEM) software and the U.S. Department of Agriculture (USDA) Nationwide Continuing Surveys of Food Intake by Individuals (SCFII) that was conducted from 1989 through 1992.

ii. *Drinking water*—a. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Dow AgroSciences concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b. *Chronic exposure and risk.* The Agency calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozide using generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI-GROW) (ground water) models for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water were 16.5 parts per billion (ppb) and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOC) for tebufenozide in ground water, and surface water.

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface water and ground waters (16.5 ppb) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized below in Table:

TABLE—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food exposure (mg/kg/day)	Exposure max. water (mg/kg/day)[3]	(DWLOC) µg/L)[4, 5, 6]	EEC[7] calc. max. µg/L (in percent)
U.S. population (48 contiguous states)	0.018	0.0038	0.0142	497	16.5
Females (13 + years)	0.018	0.0043	0.0137	411	16.5
Children (1–6 years)	0.018	0.0092	0.0088	88	16.5

[1] Values are expressed to two significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum water exposure chronic milligrams/kilogram/day (mg/kg/day) = Chronic PAD mg/kg/day.
[4] Drinking water levels of concern (DWLOC) µg/L) = Max. water exposure mg/kg/day x bodyweight kg divided by 10^{-3} mg/µg) x water consumed daily (L/day).
[5] HED default body weights are: General U.S. population, 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[6] HED default daily drinking rates are 2 liter/day (L/day) for adults and 1 L/day for children.
[7] Estimates Environmental Concentration (EEC). Chronic 56–day value.

2. *Non-dietary exposure.* There is a potential for occupational exposure to tebufenozide during mixing, loading and application activities. However, the Agency did not identify dermal or inhalation endpoints for tebufenozide and determined that risks from these routes of exposure are negligible.

D. Cumulative Effects

Cumulative exposure to substances with a common mechanism of toxicity, Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether tebufenozide 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, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, Dow AgroSciences has not assumed that tebufenozide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Dow AgroSciences has concluded that dietary (food only) exposure to tebufenozide will utilize 21% of the chronic population adjusted dose (cPAD) for the U.S. population, and 51% of the cPAD for the most

highly exposed population subgroup (children 1–6 years old). EPA generally has no concern for exposures below 100% of the cPAD. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and run off to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than the Agency's DWLOCs. There are no chronic non-occupational/residential exposures expected for tebufenozide. Therefore, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systematic toxicity.

FFDCA section 408 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 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. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

There is a complete toxicity data base for tebufenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For the reasons summarized above, Dow AgroSciences concludes that an additional safety factor is not needed to protect the safety of infants and children.

Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 21% of the cPAD for the U.S. population, and 51% of the cPAD for the most highly exposed population subgroup (children 1–6 years old). EPA generally has no concern for exposures below 100% of the cPAD. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary non-occupational exposure, Dow AgroSciences does not expect the aggregate exposure to exceed 100% of the RfD.

F. International Tolerances

Codex MRLs have been established for residues of tebufenozide in/on pome fruit 1.0 ppm, husked rice 0.1 ppm and walnut 0.05 ppm. Tebufenozide is registered in Canada, and a tolerance for residues in/on apples is established at 1.0 ppm. EPA has set the pome fruit tolerance at 1.5 ppm based on U.S. field residue trials.

[FR Doc. 04–1241 Filed 1–27–04; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0404; FRL–7339–2]

Harpin Protein; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0404, must be received on or before February 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diana Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8367; e-mail address: *horne.diana@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)
- Pesticde 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 ID number OPP–2003–0404. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet

under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0404. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0404. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0404.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0404. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 12, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the EDEN Bioscience Corporation, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EDEN Bioscience Corporation

PP 3F6765

EPA has received a pesticide petition (3F6765) from EDEN Bioscience Corporation, 3830 Monte Villa Parkway, Bothell, WA 98021–6942, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an amendment of the existing tolerance exemption for the biochemical pesticide harpin protein on all raw agricultural commodities. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, EDEN Bioscience Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by the EDEN Bioscience Corporation; and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

In the **Federal Register** of September 9, 1999 (64 FR 49010) (FRL–6095–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition (PP 9F6027) by the EDEN Bioscience Corporation. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. This petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for the biochemical pesticide harpin protein in or on all food crops. The final rule exempted the biochemical harpin from the requirement of a tolerance on food commodities when applied/used in agricultural fields and greenhouses for the management of plant diseases, the significant improvement in growth and yields, and the suppression of certain insects and other pests. EPA published a final rule establishing a tolerance exemption in the **Federal Register** of May 3, 2000 (65 FR 25660) (FRL–6497–4), amending 40 CFR 180.1204. Research on other harpin proteins that are similar to this active ingredient indicates that many of these proteins also exhibit activities of commercial value in crop production. Because 40 CFR 180.1204 does not specify the scope of harpin proteins that are exempt, EDEN proposes to clarify this exemption by specifying the criteria a protein must meet in order to be subject to the exemption.

A. Product Name and Proposed Use Practices

All products containing harpin protein(s) that meet the specifications proposed in this exemption. Products containing harpin protein are used to enhance plant growth, quality, and yield, to improve overall plant health, and to aid in pest management.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Harpin proteins share several identifying characteristics. Harpin proteins are less than 100 kilo Dalton (kD) in size. They are acidic proteins, with Daltons an iso-electric point (pI) of less than 7.0. They are comprised of at least 10% of the amino acid glycine and contain no more than one cystine amino acid residue. Harpin proteins elicit the hypersensitive response (HR). HR is characterized as rapid, localized cell death in plant tissue after infiltration of harpin into the intercellular spaces of plant leaves. Harpin proteins possess a common secondary structure consisting of alpha and beta units that form an HR domain. They are readily degraded by proteinase, and are heat stable, meaning that they retain HR activity when heated to 65 ^{o}C for 20 minutes.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* No residues of harpin protein are expected to occur at the time of harvest because harpin protein is rapidly degraded by environmental factors such microbial digestion and ultraviolet (UV) irradiation. For example, studies demonstrate that harpin is degraded within minutes by SubtilisinA, a microbial enzyme that

occurs commonly in the environment. In fact, this mode of rapid degradation in the environment is one of the proposed criteria for including a harpin protein in the exemption from the requirement of a tolerance. Specifically, the proposed criterion is ''no protein fragments >3.5 kD after 15 minutes degradation with SubtilisinA.'' Residue studies submitted to support the existing exemption from tolerance demonstrate that harpin protein is not detectable at the time of harvest. In these studies, no harpin protein residues could be detected in samples taken immediately after harpin protein was applied at the maximum application rate. Because there is no detectable residue at harvest, an analytical method is not relevant.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* No analytical method to detect and measure residues of harpin protein is needed because harpin protein poses no hazard to humans. Results of mammalian toxicology studies conducted at the limit dose indicate no observed adverse effects associated with harpin protein. Moreover, no residues of harpin protein are expected to occur at the time of harvest because harpin protein is rapidly degraded by environmental factors such as microbial digestion and UV irradiation.

C. Mammalian Toxicological Profile

Products containing harpin proteins exhibit little or no mammalian toxicity. To qualify for exemption, a harpin protein must exhibit a rat acute oral toxicity lethal dose (LD_{50}) of greater than 5,000 mg product/kg body weight Toxicity Category IV. The source(s) of genetic material that encode the harpin protein(s) is limited to bacterial plant pathogens that are not known to be pathogenic to mammals. Harpin proteins must be readily degraded by a proteinase that is representative of environmental conditions. Specifically, there must be no protein fragments of a size greater than 3.5 kD after 15 minutes degradation with SubtilisinA, a proteinase that is common and widespread in the environment. Further, harpin proteins have a nontoxic mode of action; they activate the treated plant's own growth and defense systems. EDEN Bioscience Corporation has concluded that harpin proteins pose no unique or additional risk to children or infants, and proposes an exemption from the requirement of a tolerance for all harpin proteins that meet the following specifications:

1. Consists of a protein <100 kD in size that is acidic pI <7.0, glycine rich >10% and contains no more than one cystine residue.

2. The source(s) of genetic material encoding the protein are bacterial plant pathogens that are not known to be mammalian pathogens.

3. Elicits the hypersensitive response (HR) which is characterized as rapid, localized cell death in plant tissue after infiltration of harpin into the intercellular spaces of plant leaves.

4. Possesses a common secondary structure consisting of alpha and beta units that form an HR domain.

5. Is heat stable (retains HR activity when heated to 65 °C for 20 minutes).

6. Is readily degraded by a proteinase representative of environmental conditions (no protein fragments >3.5 kDa after 15 minutes degradation with SubtilisinA).

7. Exhibits a rat acute oral toxicity LD_{50} of >5,000 mg product/kg body weight.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Because harpin proteins are rapidly degraded in the environment by common proteinases, UV irradiation, and oxidizing agents, no active ingredient residues are detectable, using available methods, on treated crops even immediately after application. Dietary exposure to harpin via consumption of treated food or feed is negligible, if any at all.

ii. *Drinking water.* Harpin proteins readily degraded by common proteinases and UV irradiation, and are highly sensitive to very small amounts of chlorine or similar oxidizing agents as contained in many municipal water systems. Therefore, residues of harpin are unlikely to occur in drinking water or food, given its rapid degradation in soil and water.

2. *Non-dietary exposure.* The company believes that the potential for non-dietary exposure to the general population including infants and children is unlikely as the proposed use sites are primarily commercial, agricultural and horticultural settings and that non-dietary exposures would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased nondietary exposure of harpin via home and garden use, etc., is not considered likely because of the typically low use rates and volumes, and the lack of persistence of the active ingredient in the environment.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of harpin protein and no information that indicates that toxic effects would be cumulative with any other compounds. Moreover, harpin proteins do not exhibit a toxic mode of action in its target pests or diseases.

F. Safety Determination

1. *U.S. population.* Harpin's lack of toxicity is demonstrated by the results of acute toxicity testing in mammals in which harpin causes no adverse effects when dosed orally at the limit dose for the study. Thus, the aggregate exposure to harpin over a lifetime should pose negligible risks to human health.

2. *Infants and children.* Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to harpin residues. Exempting harpin proteins that meet the specified criteria from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Effects on the Immune and Endocrine Systems

EDEN Bioscience Corporation has no information to suggest that harpin proteins will adversely affect the immune or endocrine systems.

H. Existing Tolerances

An existing exemption from tolerance has been established for harpin protein in the United States, 40 CFR 180.1204.

I. International Tolerances

EDEN Bioscience Corporation is not aware of any tolerances, exemptions from tolerance or maximum residue levels issued for harpin protein outside of the United States.

[FR Doc. 04–1242 Filed 1–27–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 16, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 29, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0624.

Title: Section 24.103(f), Amendment of the Commission's Rules to Establish New Personal Communications Services.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 8.

Estimated Time Per Response: 250 hours for nationwide licensees, 50 hours for each regional licensee and 25 hours for each MTA licensee.

Frequency of Response: Recordkeeping requirement and every 10 year, 5 years and 1 year reporting requirement (depending upon the license requirement).

Total Annual Burden: 770 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 24.103 requires certain narrowband PCS licensees to notify the Commission at specific benchmarks that they are in compliance with construction requirements in order to ensure that licensees quickly construct their systems and provide substantial service to licensed areas. Further the reporting and recordkeeping requirements under Section 24.103 will be used to determine whether the proposed partitionee or disaggregate is an entity qualified to obtain a partitioned license or disaggregated spectrum. The Commission is revising this collection because we are planning to combine this information collection with 3060–0625, Amendment of the Commission's Rules to Establish New Personal Communications Services under part 24. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1750 Filed 1–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 16, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 29, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0702.

Title: Amendment of Parts 20 and 24 of the Commission's Rules —Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission's Cellular PCS Cross-Ownership Rule.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents: 150.

Estimated Time Per Response: 2.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 2,251 hours.

Annual Cost Burden: $1,079,000.

Needs and Uses: The Universal Licensing System (ULS) establishes streamlined set of rules that minimize filing requirements, eliminates redundant or unnecessary submission requirements; and assures ongoing collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements contained in this collection are a result of the elimination of a number of filing requirements. The information collection requirement will enable the Commission to ensure that no bidder gains unfair advantage over other bidders in its spectrum auctions and thus enhance the competitiveness and fairness of its auctions. The information collected will be reviewed and, if warranted, referred to the Commission's

Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation. The Commission is planning on submitting this information collection after this 60-day comment period as an extension (no change) to obtain the normal three year OMB clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–1751 Filed 1–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3731]

Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in Georgia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Public Service Cellular, Inc. (PSC) petition. PSC is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Georgia.

DATES: Comments are due on or before February 9, 2004. Reply comments are due on or before February 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Scott A. Mackoul, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7498, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released November 20, 2003. On September 23, 2003, PSC filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, to receive federal universal service support in the State of Georgia. PSC specifically seeks ETC designation to receive support for the service it provides in its commercial mobile radio service (CMRS) licensed areas that are currently served by non-rural telephone companies and Public Service Telephone Company (PSTC), which is a rural telephone company and a commonly owned affiliate of PSC. In support of its request, PSC contends that: the Georgia Public Service Commission (Georgia Commission) has provided an affirmative statement that it does not exercise jurisdiction over CMRS carriers in general, and PSC specifically, for purposes of making determinations concerning eligibility for ETC designations; PSC satisfies all the statutory and regulatory prerequisites for ETC designation; and designating PSC as an ETC will serve the public interest.

Pursuant to § 54.207 of the Commission's rules, PSC also requests that the Commission designate PSC as an ETC in service areas defined along boundaries that differ from PSTC's rural study area boundary. PSC requests that each PSTC wire center in which PSC intends to provide service is classified as a separate service area on a wire center by wire center basis. PSC also states that PSTC's wire centers are completely within PSC's CMRS service areas except for the Culloden and Lizella wire centers. PSC requests ETC designation in the portions of each of the Culloden and Lizella wire centers where it is licensed to provide mobile services. PSC maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service. The Wireline Competition Bureau seeks comment on PSC's petition.

The petitioner must provide copies of its petition to the Georgia Commission. The Commission will also send a copy of this Public Notice to the Georgia Commission by overnight express mail to ensure that the Georgia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before February 9, 2004, and reply comments are due on or before February 23, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed with the Commission through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor,

Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 04–1837 Filed 1–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3730]

Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Public Service Cellular, Inc. (PSC) petition. PSC seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for service offered throughout its licensed service area in the State of Alabama.

DATES: Comments are due on or before February 9, 2004. Reply comments are due on or before February 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Scott A. Mackoul, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7498, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, CC Docket No. 96–45, released November 20, 2003. On September 12, 2003, PSC filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, seeking designation as an ETC to receive Federal universal service support for those areas within its authorized service area in Alabama currently served by non-rural telephone companies. Specifically, PSC contends that: The Alabama Public Service Commission (Alabama Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers; PSC satisfies all the statutory and regulatory prerequisites for ETC designation; and designating PSC as an ETC will serve the public interest. The Wireline Competition Bureau seeks comment on PCS's petition.

The petitioner must provide copies of its petition to the Alabama Commission. The Commission will also send a copy of this public notice to the Alabama Commission by overnight express mail to ensure that the Alabama Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before February 9, 2004, and reply comments are due on or before February 23, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed with the Commission through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 04–1838 Filed 1–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011117–032.

Title: United States/Australasia Discussion Agreement.

Parties: P&O Nedlloyd Limited; Australia-New Zealand Direct Line; Contship Containerlines; Hamburg-Sud; Compagnie Maritime Marfret, S.A.; Wallenius Wilhelmsen Lines AS; CMA CGM, S.A.; Fesco Ocean Management Limited; A.P. Moller-Maersk A/S; and Lykes Lines Limited, LLC.

Synopsis: The amendment deletes Contship Containerlines as a party to the agreement.

Agreement No.: 011275–015.

Title: Australia/United States Discussion Agreement.

Parties: Hamburg-Sud; P&O Nedlloyd Limited; Australia-New Zealand Direct Line; LauritzenCool AB; Seatrade Group NV; FESCO Ocean Management Inc.; A.P. Moller-Maersk A/S; and Lykes Lines Limited, LLC.

Synopsis: The amendment revises the parties' minimum service levels under the agreement and removes reference to Hamburg-Sud's trade name.

Agreement No.: 011407–007.

Title: Australia/United States Containerline Association.

Parties: Hamburg-Sud, P&O Nedlloyd Limited, Australia-New Zealand Direct Line, and Lykes Lines Limited, LLC.

Synopsis: The amendment removes reference to Hamburg-Sud's trade name.

Agreement No.: 011868.

Title: CSCL/NLL Cross Space Charter, Sailing and Cooperative Working agreement—AAC Service.

Parties: China Shipping Container Lines Co., Ltd. and Norasia Container Lines Limited.

Synopsis: The agreement would authorize the carriers to share vessel space in the trade between the West Coast of the United States and the Far East. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: January 23, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1807 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P3–99]

Petition of China Ocean Shipping (Group) Company for a Partial Exemption From the Controlled Carrier Act

Served: January 22, 2004.

Order

By petition filed March 31, 1999, China Ocean Shipping (Group) Company (''COSCO'' or ''Petitioner'') has requested that the Federal Maritime Commission (''FMC'' or ''Commission'') partially exempt it from certain provisions of section 9 of the Shipping Act of 1984, 46 U.S.C. app. 1708 (''Controlled Carrier Act''). The requested exemption would enable COSCO to reduce tariff rates immediately, rather than subject to the 30-day waiting period prescribed by the Controlled Carrier Act, or the partial exemption granted by the Commission in 1998.[1] *See infra* at 3.

Notice of the filing of the Petition was published in the **Federal Register** on April 8, 1999, and interested parties were given until May 7, 1999 (later extended to September 7, 1999, in response to unopposed motions of American President Lines, Ltd. (''APL'') and Sea-Land Service, Inc. (''Sea-Land'')), to file comments. 64 FR 17181 (April 8, 1999). For the reasons set forth below, the Commission has determined to re-open this proceeding for a brief comment period before it makes its final determination in this matter.

I. The Petition

COSCO explains that ocean common carriers, with the exception of controlled carriers, are permitted to reduce their rates effective immediately upon filing.[2] Only controlled carriers are subject to the 30-day waiting period for reductions in tariff rates, as set forth in section 9(c).[3]

On March 27, 1998, the Commission granted COSCO a limited exemption from the 30-day waiting requirement of section 9(c), allowing COSCO to decrease its tariff rates to levels which would meet or exceed those of its competitors with no waiting period. *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984*, Petition No. P1–98, 28 S.R.R. 144 (1998)(hereinafter ''1998 Order''). In the current petition, COSCO seeks authority to reduce rates on less than 30 days notice, regardless of whether it is meeting a rate published by a competitor.

II. Comments

COSCO filed supporting comments from many of its shipper, freight forwarder/customs broker and NVOCC customers: Evapco, Inc.; Metro International Trading Corporation; McQuay International; Kamden International Shipping, Inc.; Shintech, Inc.; Consolidated Factors, Inc.; Fresh Western International, Inc.; Kanematsu USA, Inc.; Paramount Export Company; Nichirei Foods, Inc.; Twin City Foods, Inc.; Mincepa Inc., K-Swiss; DSL Transportation Services; Global Transportation Services, Inc.; Pacific/Atlantic Crop Exchange; Action Freight & Logistics USA, Inc.; Golden Gem Growers, Inc.; Louis Dreyfus Export Corp.; Beical International (USA) Corp.; LandOcean Management, Inc.; Medical Books for China International; AEI Ocean Services; BWWI (USA), Inc.; Trans USA Corp.; Tanimura and Antle; Porky Products, Inc.; ANRO; Suncoast Moving and Storage; Hellman International Forwarders, Inc.; Ponica Industrial Co., Ltd.; Norman Kreiger, Inc.; Freight Solutions International; Zen Trading Co., Ltd.; Forte Lighting, Inc.; Zen Continental Co., Inc.; AFS Logistic Management, Inc.; Coaster Co. of America; Edward Mittelstaedt, Inc.; Chase Leavitt (Customhouse Brokers), Inc.; Inter-Freight Logistics, Inc.; Calcot, Ltd.; Phoenix International Freight Services, Ltd.; Titan Steel Corporation; Pfizer, Inc.; Allen's Family Foods, Inc.; Townsends, Inc.; Boston Logistics, Inc.; Asian Metals & Alloys Corp.; MSAS Global Logistics, Inc.; Polonez Parcel

[1] Section 9(c) states, in relevant part: ''Notwithstanding section 8(d) of this Act and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.'' 46 U.S.C. app. 1708(c).

[2] Section 8(d) of the Shipping Act of 1984 (''Shipping Act'') requires that all common carriers, controlled or otherwise, must give 30 days notice for rate *increases*. 46 U.S.C. app. 1707(d).

[3] Section 3(8) of the Shipping Act defines ''controlled carrier'' as:

an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by the government under whose registry the vessels of the carrier operate; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

46 U.S.C app. 1702(8).

Service, Inc.; Ionics, Inc.; Del-Tank International, Ltd.; and the MI Group.

The Commission also received comments from AEI Ocean Services; the Baltic and International Maritime Council; Zhang Liyong, President of China Ocean Shipping Company Americas, Inc.; U.S. Senator Patty Murray, together with U.S. Representatives Norm Dicks and Jim McDermott (all of Washington); American President Lines, Ltd.; and Sea-Land Service, Inc.

Recently, the Commission received letters from the Maritime Administrator, Captain William G. Schubert, and from the Under Secretary of State for Business, Economics and Agricultural Affairs, Alan P. Larson, reporting on the recently-signed bilateral Maritime Agreement with China.[4] Both the Maritime Administrator and the Under Secretary of State urge the Commission to favorably consider the petitions of three Chinese controlled carriers currently under review by the Commission.[5] The Maritime Administrator also urges U.S. carriers and shippers to support these petitions.

III. Discussion

The comment period in this proceeding originally closed on September 7, 1999. However, in light of the information provided by the Maritime Administration and the Department of State, the Commission has determined to open a brief comment period to allow all persons interested in the petition a full and fair opportunity to comment.

Conclusion

As the Commission will consider the recommendations of the Maritime Administration and the Department of State, and is concerned that all interested parties have an opportunity to comment, the Commission has determined that it will invite further comments from the shipping public in this proceeding. The Commission will consider the petition in light of these further comments at a meeting to be scheduled promptly after close of the comment period.

Therefore, it is ordered that interested parties may file comments relevant to this proceeding until February 23, 2004.

[4] The Commission will include these letters in the record of the proceeding.

[5] In addition to the instant Petition, they are: Petition No. P6–03, *Petition of Sinotrans Container Lines Co., Ltd. for a Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended*; and Petition No. P4–03, *Petition of China Shipping Container Lines Co., Ltd. for Permanent Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984.*

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1804 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P4–03]

Petition of China Shipping Container Lines Co., Ltd. for Permanent Full Exemption From the First Sentence of Section 9(c) of the Shipping Act of 1984

Served: January 22, 2004.

Order

By petition filed July 31, 2003, China Shipping Container Lines Co., Ltd. (''China Shipping'' or ''Petitioner'') requested that the Federal Maritime Commission (''FMC'' or ''Commission'') exempt it from certain provisions of section 9 of the Shipping Act of 1984, 46 U.S.C. app. 1708 (''Controlled Carrier Act''). The requested exemption would enable China Shipping to reduce tariff rates immediately, rather than subject to the 30-day waiting period prescribed by the Controlled Carrier Act.[1] Notice of the filing of the petition was published in the **Federal Register** on August 8, 2003, and interested parties were given until August 25, 2003, to file comments. 68 FR 47310. For the reasons set forth below, the Commission has determined to re-open this proceeding for a brief comment period before it makes its final determination in this matter.

I. The Petition

China Shipping explains that ocean common carriers, with the exception of controlled carriers, are permitted to reduce their rates effective immediately upon filing.[2] Only controlled carriers are subject to the 30-day waiting period for reductions in tariff rates, as set forth in section 9(c).[3]

On March 27, 1998, the Commission granted China Ocean Shipping (Group) Ltd. (''COSCO'') a limited exemption from the 30-day waiting requirement of section 9(c), allowing COSCO to decrease its tariff rates to levels which would meet or exceed those of its competitors with no waiting period. *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984*, Petition No. P1–98, 28 S.R.R. 144 (1998)(hereinafter ''1998 Order''). COSCO has since filed another request, seeking the authority to reduce tariff rates on less than 30 days notice, regardless of whether it is meeting a rate published by a competitor. Petition No. P3–99, *Petition of China Ocean Shipping Group (Company) for a Partial Exemption from the Controlled Carrier Act.* 64 FR 17181 (April 9, 1999). China Shipping, in the instant Petition, seeks the same relief as requested by COSCO in Petition No. P3–99.

II. Comments

The Commission received comments in response to China Shipping's Petition from the American Institute for Shippers' Associations, Inc. and American President Lines, Ltd.

Recently, the Commission received letters from the Maritime Administrator, Captain William G. Schubert, and from the Under Secretary of State for Business, Economics and Agricultural Affairs, Alan P. Larson, reporting on the recently-signed bilateral Maritime Agreement with China.[4] Both the Maritime Administrator and the Under Secretary of State urge the Commission to favorably consider the petitions of three Chinese controlled carriers currently under review by the Commission.[5] The Maritime Administrator also urges U.S. carriers and shippers to support these petitions.

III. Discussion

The comment period in this proceeding originally closed on August

[1] Section 9(c) states, in relevant part: ''Notwithstanding section 8(d) of this Act and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.'' 46 U.S.C. app. 1708(c).

[2] Section 8(d) of the Shipping Act of 1984 (''Shipping Act'') requires that all common carriers, controlled or otherwise, must give 30 days notice for rate *increases.* 46 U.S.C. app. 1707(d).

[3] Section 3(8) of the Shipping Act defines ''controlled carrier'' as: an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by the government under whose registry the vessels of the carrier operate; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

46 U.S.C. 1702(8).

[4] The Commission will include these letters in the record of the proceeding.

[5] In addition to the instant Petition, they are: Petition No. P3–99, *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act;* and Petition No. P6–03, *Petition of Sinotrans Container Lines Co., Ltd. for a Full Exemption From the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended.*

25, 2003. However, in light of the information provided by the Maritime Administration and the Department of State, the Commission has determined to open a brief comment period to allow all persons interested in the petition a full and fair opportunity to comment.

Conclusion

As the Commission will consider the recommendations of the Maritime Administration and the Department of State, and is concerned that all interested parties have an opportunity to comment, the Commission has determined that it will invite further comments from the shipping public in this proceeding. The Commission will consider the petition in light of these further comments at a meeting to be scheduled promptly after close of the comment period.

Therefore, it is ordered that interested parties may file comments relevant to this proceeding until February 23, 2004.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1803 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P6–03]

Petition of Sinotrans Container Lines Co., Ltd. for a Full Exemption From the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended

Served: January 22, 2004.

Order

By petition filed August 11, 2003, Sinotrans Container Lines Co., Ltd. (''Sinolines'' or ''Petitioner'') requested that the Federal Maritime Commission (''FMC'' or ''Commission'') exempt it from certain provisions of section 9 of the Shipping Act of 1984, 46 U.S.C. app. 1708 (''Controlled Carrier Act''). The requested exemption would enable Sinolines to reduce tariff rates immediately, rather than subject to the 30-day waiting period prescribed by the Controlled Carrier Act.[1] Notice of the filing of the petition was published in the **Federal Register** on August 19, 2003, and interested parties were given until September 5, 2003, to file comments. 68 FR 49776. For the reasons set forth below, the Commission has determined to re-open this proceeding for a brief comment period before it makes its final determination in this matter.

I. The Petition

Sinolines explains that ocean common carriers, with the exception of controlled carriers, are permitted to reduce their rates effective immediately upon filing.[2] Only controlled carriers are subject to the 30-day waiting period for reductions in tariff rates, as set forth in section 9(c).[3]

On March 27, 1998, the Commission granted China Ocean Shipping (Group) Ltd. (''COSCO'') a limited exemption from the 30-day waiting requirement of section 9(c), allowing COSCO to decrease its tariff rates to levels which would meet or exceed those of its competitors with no waiting period. *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984,* Petition No. P1–98, 28 S.R.R. 144 (1998)(hereinafter ''1998 Order''). COSCO has since filed another request, seeking the authority to reduce tariff rates on less than 30 days notice, regardless of whether it is meeting a rate published by a competitor. Petition No. P3–99, *Petition of China Ocean Shipping Group (Company) for a Partial Exemption from the Controlled Carrier Act.* 64 FR 17181 (April 9, 1999). Sinolines, in the instant petition, seeks the same relief as requested by COSCO in Petition No. P3–99.

II. Comments

The Commission received seven comments in response to Sinolines' petition from: The American Institute for Shippers' Associations, Inc.; Coaster Company of America; Expeditors International; Zen Continental Company, Inc.; Translink Shipping, Inc.; Vitasoy International Holdings, Ltd.; and American President Lines, Ltd.

Recently, the Commission received letters from the Maritime Administrator, Captain William G. Schubert, and from the Under Secretary of State for Business, Economics and Agricultural Affairs, Alan P. Larson, reporting on the recently-signed bilateral Maritime Agreement with China.[4] Both the Maritime Administrator and the Under Secretary of State urge the Commission to favorably consider the petitions of three Chinese controlled carriers currently under review by the Commission.[5] The Maritime Administrator also urges U.S. carriers and shippers to support these petitions.

III. Discussion

The comment period in this proceeding originally closed on August 25, 2003. However, in light of the information provided by the Maritime Administration and the Department of State, the Commission has determined that it will open a brief comment period to allow all persons interested in the petition a full and fair opportunity to comment.

Conclusion

As the Commission will consider the recommendations of the Maritime Administration and the Department of State, and is concerned that all interested parties have an opportunity to comment, the Commission has determined that it will invite further comments from the shipping public in this proceeding. The Commission will consider the petition in light of these further comments at a meeting to be scheduled promptly after close of the comment period.

Therefore, it is ordered that interested parties may file comments relevant to this proceeding until February 23, 2004.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1802 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

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[1] Section 9(c) states, in relevant part: ''Notwithstanding section 8(d) of this Act and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.'' 46 U.S.C. app. 1708(c).

[2] Section 8(d) of the Shipping Act of 1984 (''Shipping Act'') requires that all common carriers, controlled or otherwise, must give thirty days' notice for rate *increases.* 46 U.S.C. app. 1707(d).

[3] Section 3(8) of the Shipping Act defines ''controlled carrier'' as:

an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by the government under whose registry the vessels of the carrier operate; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

46 U.S.C app. 1702(8).

[4] The Commission will include these letters in the record of the proceeding.

[5] In addition to the instant Petition, they are: Petition No. P3–99, *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act;* and Petition No. P4–03, *Petition of China Shipping Container Lines Co., Ltd. for Permanent Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984.*

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2073F.
Name: Aero Sea Shipping Co., Inc.
Address: 580 Sylvan Avenue, Englewood Cliffs, NJ 07632.
Date Revoked: December 12, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16914NF.
Name: Air Sea Cargo Network, Inc.
Address: 33511 Western Avenue, Union City, CA 94587.
Date Revoked: January 1, 2004.
Reason: Failed to maintain valid bonds.

License Number: 16254N.
Name: China United Transport, Inc.
Address: 17890 Castleton Street, Suite 220, City of Industry, CA 91748.
Date Revoked: January 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 18140N.
Name: Commonwealth Custom Broker, Inc. dba C.C.B. Logistics dba C.C.B. Terminal.
Address: 8100 NW. 29th Street, Miami, FL 33122.
Date Revoked: January 13, 2004.
Reason: Failed to maintain a valid bond.

License Number: 15871N.
Name: Continental Shipping Line, Inc.
Address: 168 SE. 1st Street, Suite 601, Miami, FL 33131.
Date Revoked: December 31, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17642F.
Name: Direct Shipping, Corp. dba Direct Shipping Line.
Address: 1371 South Santa Fe Avenue, Compton, CA 90221.
Date Revoked: November 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17305N.
Name: Distribution Support Systems, Inc.
Address: 6454 East Taft Road, East Syracuse, NY 13057.
Date Revoked: January 14, 2004.
Reason: Surrendered license voluntarily.

License Number: 13882N.
Name: East-West Consolidation Service, Inc.
Address: 214 Bald Eagle Drive, Somerville, NJ 08876.
Date Revoked: January 17, 2004.
Reason: Failed to maintain a valid bond.

License Number: 3134F.
Name: Enterprise Forwarders, Inc.
Address: 2350 NW. 93rd Avenue, Miami, FL 33172.
Date Revoked: December 12, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16597N.
Name: First Forward International Services, Inc. dba First Forward Container Line.
Address: 8915 S. La Cienega Blvd., Unit D, Inglewood, CA 90301.
Date Revoked: January 11, 2004.
Reason: Failed to maintain a valid bond.

License Number: 3366F.
Name: International Consulting and Services, Inc.
Address: 550 North Military Avenue, Suite 8, Green Bay, WI 54303.
Date Revoked: December 6, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17064N.
Name: International Transport Solutions, Inc.
Address: 145–69 226th Street, Jamaica, NY 11413.
Date Revoked: December 8, 2003.
Reason: Surrendered license voluntarily.

License Number: 17310N.
Name: J.M.C. Transport Corporation.
Address: 9133 South La Cienega Blvd., Suite 120, Inglewood, CA. 90301
Date Revoked: December 4, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17177F.
Name: Kito Electronics Limited Company dba Kito Cargo.
Address: 10530 NW. 37th Terrace, Miami, FL 33178.
Date Revoked: December 28, 2003.
Reason: Failed to maintain a valid bond.

License Number: 829F.
Name: Leyden Shipping Corporation.
Address: 30 Vesey Street, New York, NY 10002.
Date Revoked: December 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4478F.
Name: Marina Ocean Air International, LLC.
Address: P.O. Box 1906, So. San Francisco, CA 94083.
Date Revoked: October 15, 2003.
Reason: Surrendered license voluntarily.

License Number: 18026N.
Name: Mirsonia, Inc.
Address: 1515 S. Maple Avenue, Suite 5, Los Angeles, CA 90015.
Date Revoked: December 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 512F.
Name: Nordstrom Freighting Corporation.
Address: 100 Mill Plain Road, Danbury, CT 06811.
Date Revoked: December 4, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16561N.
Name: Palumbo USA Inc.
Address: 1099 Wall Street West, Suite 395, Lyndhurst, NJ 07071.
Date Revoked: December 31, 2003.
Reason: Surrendered license voluntarily.

License Number: 3762NF.
Name: Savino Del Bene, Inc.
Address: 149–10 183rd Street, Jamaica Queens, NY 11413.
Date Revoked: December 10, 2003.
Reason: Surrendered license voluntarily.

License Number: 17053F.
Name: Top Container Line Inc.
Address: 2131 W. Willow Street, Suite 200, Long Beach, CA 90810.
Date Revoked: November 8, 2003.
Reason: Surrendered license voluntarily.

License Number: 16772N.
Name: Trans Pacific Inc.
Address: Puchi Bldg., 4th Fl., 19–1 Tsukishima, 1-Chome Chuo-Ku, Tokyo, Japan.
Date Revoked: October 21, 2003.
Reason: Surrendered license voluntarily.

License Number: 15097N.
Name: United Globe Cargo, Inc.
Address: 2142 NW. 99th Avenue, Miami, FL 33172.
Date Revoked: December 14, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–1806 Filed 1–27–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17305F	Distribution Support Systems, Inc., 6454 East Taft Road, East Syracuse, NY 13057	January 15, 2004.
17053N	Top Container Line Inc., 2131 W. Willow Street, Suite 200, Long Beach, CA 90810	November 8, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–1805 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Ramses Logistics USA, Inc., 370 S. Crenshaw Blvd., #E202N, Torrance, CA 90503. Officers: Young H. Cho, CFO (Qualifying Individual), Rae Moon Park, President.

JT Worldwide Corporation, 1310 Rock Cove Ct., Hoffman Estates, IL 60195. Officers: Junyuan Tsang, President (Qualifying Individual), Heoung Joo Lim, Vice President.

J Eastern Transport International, Inc., Eastern Transport International, 555 W. Redondo Beach Blvd., #203, Gardena, CA 90248. Officer: Joon Seok Kim, President (Qualifying Individual).

Nara Express Incorporated, 5150 East La Palma Avenue, Suite 210, Anaheim Hills, CA 92807, Officers: Michael Kiyoup Kim, Vice President (Qualifying Individual), Jin Kul Kim, President.

ACGroup Worldwide Logistics Inc., 701 W. Manchester Blvd., Suite 203, Inglewood, CA 90301. Officers: Tonney Tung, President (Qualifying Individual), Foo Kia Kuan, Director.

Eagle Maritime, Inc., 1421 Witherspoon Street, Rahway, NJ 07065. Officer: Rajiv Dixit, President (Qualifying Individual).

Standard Caribbean Shipping, Inc., 8202 Foster Avenue, Brooklyn, NY 11236. Officer: Carl Munro, President (Qualifying Individual).

International Freight & Logistics, Inc., 1530 Smith Circle, #401, Wichita, KS 67212. Officer: Rory J. Arnott, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Aqual Maritime Services, 3639 Campfield Ct., Katy, TX 77449. Christopher Onyekwere, Sole Proprietor.

Sea Central Shipping Corp., 2377 Guy N. Verger Blvd., Tampa, FL 33605. Officers: Roberto Cordovez, Operations Manager (Qualifying Individual), Pedro S. Javier Sarabia, President.

KLS Air Express, Inc. dba FSP Maritime, dba Freight Solution Providers, 3231 Evergreen Avenue, West Sacramento, CA 95691. Officers: Michael Dew, Vice President (Qualifying Individual), Lelanie Steers, Director, President.

NK America, Inc., 2640 Campbell Road, Sidney, OH 45365. Officer: Masami Hiraoka, Vice President (Qualifying Individual).

Argonaut-Kennedy LLC. dba AMK Lines, 6875 Middlebelt Road, Romulus, MI 48174. Officers: Lia A. Wood, Vice President (Qualifying Individual), Michael Kennedy, President.

Berr International, Inc., 8344 NW, 30 Terrace, Miami, FL 33122. Officer: Guarionex A. Berrido, President (Qualifying Individual).

Elal Moving Corp. dba Global Express, 2262 West Street, Brooklyn, NY 11223. Officers: Bella Grushko, Director (Qualifying Individual), Hanan Assayag, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Falcon Logistics, Inc., 15734 Lee Road, Humble, TX 77396. Officers: Robert F. Beasley, Vice President (Qualifying Individual), Roger Rumsey, President.

Dated: January 23, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–1809 Filed 1–27–04; 8:45 am]

BILLING CODE 6730–01–P

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 February 11, 2004.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David D. and Kristine A. Gale, Lincoln, Nebraska; David E. Rogers, Omaha, Nebraska; Jon C. and Deonne L. Bruning, Lincoln, Nebraska; Edward J. and Marliss G. Miller, Nebraska City, Nebraska; Paul and Andrea Mengedoth, Overland Park, Kansas; Roger and Mary Bruning, Lincoln, Nebraska; and Jennifer and David Brown, Mountain View, California; to acquire additional voting shares of Davenport Community Bancshares, Inc., and thereby indirectly acquire additional voting shares of Jennings State Bank, both of Davenport, Nebraska.

Board of Governors of the Federal Reserve System, January 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1743 Filed 1–27–04; 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 February 20, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bainbridge Bancshares, Inc., Bainbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Decatur County, Bainbridge, Georgia (in organization).

Board of Governors of the Federal Reserve System, January 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1742 Filed 1–27–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. FV01–2004]

Family Violence Prevention and Services Program

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families, (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funding to States for family violence prevention and services.

SUMMARY: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas). The purpose of these grants is to assist States in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2004.

DATES: Applications for FY 2004 State grant awards meeting the criteria specified in this instruction should be received no later than February 20, 2004.

ADDRESSES: Applications should be sent to Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: Ms. Sunni Knight, 330 C Street, SW., Room 2117, Washington, DC, 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529; or e-mail at *WRiley@acf.hhs.gov*, or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Annual State Administrators Grantee Conference

The annual grantee conference for the State FVPSA Administrators is a training and technical assistance activity. Attendance at these activities is mandatory. Family Violence Prevention and Services Act (FVPSA) funds may be used to support attendance and participation. A subsequent Program Instruction will advise the State FVPSA administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities, individual identifiers of client records will not be used (section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Public Law 107–67, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, will be transferred to the U.S. Department of Health and Human Services in accordance with the Act for support of services to children and youth affected by domestic violence. It is projected that initial revenues will be received during the third quarter of FY 2004. Subsequent to the receipt of the stamp proceeds, a program announcement will be issued providing guidance and information on the process and requirements for awards to programs providing services to children and youth.

The Importance of Coordination of Services

The impacts of family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services (HHS) urges the designated State agencies receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457,

42 U.S.C. 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Public Law 102–295, in 1994 by Public Law 103–322, the Violent Crime Control and Law Enforcement Act, in 1996 by Public Law 104–235, the Child Abuse Prevention and Treatment Act (CAPTA) of 1996, the Victims of Trafficking and Violence Protection Act, Public Law 106–386, in 2000. The Act was most recently amended by the Keeping Children and Families Safe Act of 2003. Public Law 108–36.

The purpose of this legislation is to assist States and Native American Tribes, Alaskan Villages and Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2003, 223 grants were made to States and Native American Tribes. The Department also made 53 family violence prevention grant awards to non-profit State domestic violence coalitions.

In addition, the Department supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February, 1996, the Department funded the National Domestic Violence Hotline (NDVH) to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The NDVH is a 24-hour, toll-free service which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1–800–799–SAFE; the TDD number for the hearing impaired is 1–800–787–3224. As of August 31, 2003 the National Domestic Violence Hotline had answered over 1 million calls.

B. Funds Available

Of the total appropriation for the Family Violence Prevention and Services Program for FY 2004, The Department of Health and Human Services will allocate 70 percent to the designated State agencies administering Family Violence Prevention and Services programs. In separate announcements the Department will allocate 10 percent to the Tribes, Alaskan Villages and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services among other activities with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

Five percent of the FY 2004 FVPSA appropriation will be available to continue the support for the National Resource Center and the four Special Issue Resource Centers. The remaining 5 percent of the FY 2004 appropriation will be used to support training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration activities at the national level through the competitive or discretionary grant process.

C. State Allocation

The Secretary is required to make available not less than 70 percent of amounts appropriated under Section 310(a) for grants to States.

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be $600,000 with the remaining funds allotted to each State on the same ratio as the population of the State has to the population of all States.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of 1 percent of the amounts appropriated.

General Grant Requirements Applicable to States

A. Definitions

States should use the following definitions in carrying out their programs. The definitions are found in Section 320 of the Act.

(1) Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance for children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers, individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for

children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

B. Expenditure Periods

The FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2004 funds may be used for expenditures from October 1, 2003 through September 30, 2005. Funds will be available for obligations only through October 1, 2004.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2004 grant funds which are made available to the States through re-allotment, under section 304(d)(2), must be expended by the State no later than September 30, 2005.

C. Reporting Requirements: State Performance Report

Section 303(a)(4) requires that States file a performance report with the Department describing the activities carried out, and inclusion of an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services which were provided. Please note that Section 303 (a) (4) of the FVPSA also requires that the director of the program suspend funding for an approved application if an applicant fails to submit an annual Performance Report. The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of women sheltered
- The number of shelters and safe houses in the State
- The number of young children sheltered (birth–12 years of age)
- The number of teenagers and young adults (13–18 years of age)
- The number of men sheltered
- The number of elderly serviced
- The average length of stay
- The number of women, children, teens, and others who were turned away because shelter was unavailable
- The number of women, children, teens, and others who were referred to other shelters due to a lack of space

Types of individuals served including special populations. Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification;
- Cultural classification;
- Language (other than English);
- Geographically isolated from shelter (urban or rural);
- Women of color;
- Persons with disabilities; and
- other special needs populations.

Related services and assistance. List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include but are not limited to the following:

- Individual counseling
- Group counseling
- Crisis intervention/hotline
- Information and referral
- Batterers support services
- Legal advocacy services
- Transportation
- Services to teenagers
- Child Care
- Training and technical assistance
- Housing advocacy
- Other innovative program activities

Volunteers—List the total number of volunteers and hours worked

Identified Abuse—Indicate the number of women, children, and men who were identified as victims of physical, sexual, and emotional abuse.

Service referrals—List the number of women, children, and men referred for the following services: (Note: If the individual was identified as a batterer please indicate.)

- Alcohol abuse
- Drug abuse
- Batterer intervention services
- Abuse as a child
- Witnessed abuse
- Emergency medical intervention
- Law enforcement intervention

The Performance Report should include narratives of success stories of services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State were addressed, and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (*e.g.*, shelters, safe-houses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity, or geographic isolation were addressed;
- A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts; and
- A discussion of exceptional issues or problems arising, but not addressed in the application.

Performance reports for the States are due on an annual basis at the end of the calendar year (December 29).

The statute also requires the Department to suspend funding for an approved application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

D. Reporting Requirements: Departmental Grants Management Reports

All State grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of each Federal fiscal year, *i.e.*, reports are due on December 29 of each year.

Application Requirements

A. Eligibility

''States'' as defined in section 320 of the Act are eligible to apply for funds. The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant

under the Social Services Block grant. These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

Additional Information on Eligibility

All applicants must have a Dun and Bradstreet Number (DUNS). A DUNS number will be required for every application for a new award or renewal/continuation of an award under formula, entitlement and block grant programs. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or a number may be requested on-line at *http://www.dnb.com.*

B. Approval/Disapproval of a State Application

The Secretary will approve any application that meets the requirements of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a 6-month period providing an opportunity for applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

Each application must contain the following information or documentation:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under this Act, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(C)).

(2) A plan describing in detail how the needs of underserved populations will be met, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation (section 303(a)(2)(C)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, *e.g.*, new shelters, services for the battered elderly, women of color etc.

(c) Describe the public information component of the State's outreach program; describe the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help, identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions and other knowledgeable individuals and interested organizations to assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with section 303(a)(2)(A), and section 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, the number of shelters to be funded, the services the state will provide, and the expected results from the use of the grant funds (section 303(a)(2)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303 (a)(2)(F)).

Each application must contain the following assurances:

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2) (A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance, as defined in section 320(5)(A), to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(f), *i.e.*, not less than 20 percent of the total funds provided for a project under this title with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in kind; and the local share will not include any Federal funds provided under any authority other than this Title (section 303(f)).

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That all grants made by the State under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the FVPSA be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the FVPSA (section 303(a)(4).

(k) That States will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

Other Information

A. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally-recognized Native American Tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this instruction have been approved by the Office of Management and Budget under control number 0970–0062.

C. Certifications

Applications must comply with the required certifications found at the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form: Pursuant to 45 CFR part 93, the certification must be signed and submitted with the application. If applicable, a standard form LLL, which discloses lobbying payments, must be submitted.

Certification Regarding Drug-Free Workplace Requirements and the Certification Regarding Debarment: The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

Certification Regarding Environmental Tobacco Smoke: The signature on the application by the chief program official attests to the applicant's intent to comply with the requirements of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services)

Dated: January 21, 2004.

Clarence Carter,

Director, Office of Community Services, Administration for Children and Families.

Appendices—Required Certifications: Anti-Lobbying and Disclosure; Drug-Free Workplace; Regarding Debarment; Regarding Environmental Tobacco Smoke.

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an

administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix D—Certification Regarding Drug-free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (*see* paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 04–1771 Filed 1–27–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0425]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of January 16, 2004 (69 FR 2602). The document announced the proposed collection of information for substances prohibited from use in animal food or feed; animal proteins prohibited in ruminant feed that had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–1062, appearing on page 2602 in the **Federal Register** of Friday, January 16, 2004, the following correction is made:

1. On page 2602, in the first column, in the heading of the document, ''[Docket No. 2002N–0273]'', is corrected to read ''[Docket No. 2003N–0425]''.

Dated: January 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E4–132 Filed 1–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0037]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUMIGAN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LUMIGAN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LUMIGAN (bimatoprost). LUMIGAN is indicated for the reduction of intraocular pressure in patients with open-angle glaucoma or ocular hypertension who are intolerant of other intraocular pressure lowering medications or insufficiently responsive (failed to achieve target IOP determined after multiple measurements over time) to another intraocular pressure lowering medication. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LUMIGAN (U.S. Patent No. 5,688,819) from Allergan, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LUMIGAN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LUMIGAN is 1,967 days. Of this time, 1,787 days occurred during the testing phase of the regulatory review period, while 180 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 29, 1995. The applicant claims October 28, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 29, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 18, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for LUMIGAN (NDA 21–275) was initially submitted on September 18, 2000.

3. The date the application was approved: March 16, 2001. FDA has verified the applicant's claim that NDA 21–275 was approved on March 16, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 907 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by March 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 26, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 7, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E4–130 Filed 1–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Development of Application Guidance for Fiscal Year 2005 Funding Opportunities for New Access Points Under the Consolidated Health Center Program, CFDA Number 93.224

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Solicitation of comments.

SUMMARY: In preparation for the development of Fiscal Year 2005 application guidance for New Access Point funding opportunities under the President's Initiative to Expand Health Centers, the Health Resources and Services Administration (HRSA) is offering public and private nonprofit entities, including tribal, faith-based and community-based organizations, an opportunity to comment on the current Program Information Notice (PIN) 2004–02 titled ''Requirements of Fiscal Year 2004 Funding Opportunity for Health Center New Access Point Grant Applications''. PIN 2004–02 is available on HRSA's Bureau of Primary Health Care (BPHC) Web site at *http://bphc.hrsa.gov/pinspals/pins.htm.* This PIN details eligibility requirements, review criteria, and awarding factors for applicants seeking support for the operation of a new delivery site for the provision of comprehensive primary and preventive health care services.

HRSA believes that consultation with the community is an integral part of the application guidance development effort directed at creating new and expanded health center access points.

The Opportunity to Comment includes (1) identifying those areas in the guidance that need clarification and/or improvement, and (2) offering suggestions for achieving improvements. Comments will be reviewed, analyzed, and summarized for use in developing requirements for the fiscal year 2005 funding opportunity for health center new access point grant applications.

Background: The goal of the President's Initiative to Expand Health Centers, which began in fiscal year 2002, is to create health care access for 1,200 of the Nation's neediest communities through new and/or significantly expanded health center access points over five years. One way to achieve this goal is through the creation of new access points for the provision of comprehensive primary and preventive health care services in areas of high need that will improve the health status and decrease health disparities of the medically underserved populations to be served. These access points may be targeted toward an entire community or toward a specific population group in a community that has been identified as having unique and significant barriers to affordable and accessible health care services.

Authorizing Legislation: Section 330(e)(1)(A) of the Public Health Service Act, as amended, authorizes support for the operation of public and nonprofit health centers that provide health services to medically underserved populations.

DATES: Please send comments no later than COB March 29, 2004. The comments should be addressed to Dr. Sam Shekar, Associate Administrator for Primary Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Tonya Bowers, Division of Health Center Development, Bureau of Primary Health Care. Ms. Bowers may be contacted by e-mail at *tbowers@hrsa.gov* or via telephone at area code 301–594–4110.

Dated: January 20, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–1734 Filed 1–27–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 04–04]

Recordation of Trade Name: ''YOUPAL''

AGENCY: Customs and Border Protection (CBP).

ACTION: Notice of final action.

SUMMARY: This document gives notice that ''YOUPAL'' has been recorded by CBP as a trade name for Youpal International Inc., an Arkansas corporation organized under the laws of the State of Arkansas, 6900 Cantrell Road, E6, Little Rock, Arkansas 72207.

The application for trade name recordation was properly submitted to CBP and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name were received by CBP within the 60-day comment period, the trade name is duly recorded with CBP and will remain in force as long as this trade name is used by this corporation, unless other action is required.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Paralegal Specialist, Intellectual Property Rights Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION: Trade names adopted by business entities may be recorded with Customs and Border Protection (CBP) to afford the particular business entity with increased commercial protection. CBP procedures for recording trade names are provided at § 133.11 *et seq.*, of the Customs Regulations (19 CFR 133.11 *et seq.*). Pursuant to these regulatory procedures, Youpal International Inc., an Arkansas corporation organized under the laws of the State of Arkansas, 6900 Cantrell Road, E6, Little Rock, Arkansas 72207, applied to CBP for protection of its trade name ''YOUPAL''.

On Monday, October 20, 2003, CBP published a notice of application for the

recordation of the trade name ''YOUPAL'' in the **Federal Register** (68 FR 59946). The notice advised that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. The closing day for the comment period was December 19, 2003.

As of the end of the comment period, December 19, 2003, no comments were received. Accordingly, as provided by § 133.14 of the Customs Regulations, ''YOUPAL'' is recorded with CBP as the trade name used by Youpal International Inc. and will remain in force as long as this trade name is used by this corporation, unless other action is required.

Dated: January 16, 2004.

George Frederick McCray,

Chief, Intellectual Property Rights Branch.

[FR Doc. 04–1753 Filed 1–27–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103686]

Public Land Order No. 7593; Withdrawal of National Forest System Land for the Davenport Electronic Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 80 acres of National Forest System land from location and entry under the United States mining laws for 20 years to protect the Davenport Electronic Site.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Field Office, 198 Neel Avenue NW., Socorro, New Mexico 87801, (505) 835–0412.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect the Davenport Electronic Site:

Cibola National Forest

New Mexico Principal Meridian

T. 1 N., R. 10 W.,
Sec. 29, S½NW¼.
The area described contains 80 acres in Catron County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: December 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–1797 Filed 1–27–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–1430–ET; UTU 42993, UTU 42952, UTU 79436]

Public Land Order No. 7594; Partial Revocation of Executive Order Dated July 2, 1910, and Secretarial Order Dated April 10, 1946; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 40 acres of public lands withdrawn for the Bureau of Land Management's Power Site Reserve No. 119 and a Secretarial Order insofar as it affects 120 acres of public lands withdrawn for the Bureau of Land Management's Power Site Classification No. 377. This order opens the lands to surface entry subject to valid existing rights and other segregations of record.

EFFECTIVE DATE: February 27, 2004.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

SUPPLEMENTARY INFORMATION: The lands are open to mining under the provisions of the Mining Claims Rights Restoration Act, 30 U.S.C. 621 (2000). Since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable to the lands included in this revocation order. The State of Utah has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act, 16 U.S.C. 818 (2000).

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Bureau of Land Management's Power Site Reserve No. 119, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 21 S., R. 24 E.,
sec. 35, NW¼NW¼.

The area described contains 40 acres in Grand County.

2. The Secretarial Order dated April 10, 1946, which established Bureau of Land Management's Power Site Classification No. 377, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 21 S., R.24 E.,
sec. 27, W½SE¼;
sec. 34, NE¼NE¼.

The area described contains 120 acres in Grand County.

3. At 10 a.m. on February 27, 2004, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. February 27, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: December 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–1796 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1050–ET; WYW 87111]

Notice of Proposed Extension of Public Land Order No. 6597; Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend Public Land Order No. 6597 for a 20-

year period. This order withdrew public lands from settlement, sale, location, and entry under the general land laws, including the mining laws, to protect the White Mountain Petroglyphs Site in Sweetwater County. The lands have been and will remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 27, 2004.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth at 307–775–6124.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to extend Public Land Order No. 6597. This withdrawal was made to protect important educational, scientific, and artistic values as well as the capital investments of the White Mountain Petroglyphs Site. Public Land Order No. 6597 will expire on March 25, 2005.

The withdrawal comprises approximately 20.00 acres of public land as described below:

Sixth Principal Meridian

T. 22 N., R. 105 W.,
Sec. 11, NE¼SE¼SE¼,
N½SW¼SE¼SE¼;
Sec. 12, W½NW¼SW¼SW¼.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the BLM Wyoming State Director.

Comments, including names and street addresses of respondents, will be available for public review at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming, during regular business hours 7:30 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension should submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Dated: January 14, 2004.

Melvin Schlagel,

Realty Officer.

[FR Doc. 04–1800 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1430–EQ; N–77592, N–25773]

Realty Action: Lease of Public Land for Public Airport Purposes and Termination of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Public land in Lander County, Nevada has been found suitable for a proposed lease to the Town of Kingston, the land to be used for public airport purposes under the authority of the Federal Public Airport Act of 1928, as amended. Public land previously segregated in connection with an expired public airport lease is hereby opened to the operation of the public land laws and the mining laws.

DATES: On or before March 15, 2004, interested parties may submit comments regarding the proposed, new, public airport lease.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gail G. Givens, Assistant Field Manager, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lahr, Realty Specialist, at the above address or telephone (775) 635–4000.

SUPPLEMENTARY INFORMATION:

1. The following described public land in Lander County, Nevada, has been examined and found suitable for a proposed lease to the Town of Kingston, the land to be used for only public airport pruposes:

Mount Diablo Meridian, Nevada,

T. 16 N., R. 44 E.,
Sec. 31, Lot 4, N½SE¼SW¼,
E½NE¼SE¼, S½SW¼NE¼SE¼,
S½S½NW¼SE¼. N½S½SE¼,
SE¼SE¼SE¼;
containing 144.88 acres, more or less, in Lander County.

2. The above described land was previously leased for public airport purposes under BLM serial number N–25773. That lease expired by its own terms and conditions. The proposed new lease will be issued pursuant to the Act of May 24, 1928, as amended, 43 U.S.C. 1441–1443, and will be made subject to the provisions of that act, applicable regulations and all valid existing rights. The proposed lease is consistent with the BLM land use plan for the area and will serve the public interest. The public land described above was segregated by virtue of the now expired, earlier airport lease. This notice continues the segregation of the above described land from appropriation under the public land laws, including the mining laws.

3. On June 9, 1979, public land in addition to that described above was segregated for the now expired airport lease authorized under N–25773. Under the proposed new lease, the additional land will not be needed and can be opened to the operation of the public land laws and the mining laws. The additional public land is described as follows:

Mount Diablo Meridian, Nevada,

T. 16 N., R. 44 E.,
Sec. 31, S½SE¼SW¼, S½SW¼SE¼,
SW¼SE¼SE¼, N½NW¼SE¼,
NW¼NE¼SE¼, N½S½NW¼SE¼,
N½SW¼NE¼SE¼;
Sec. 32, W½W½;
T. 15 N., R. 44 E.,
Sec. 5, Lot 4;
Sec. 6, Lot 1;
containing 350.57 acres, more or less, in Lander County.

4. At 9 a.m. on February 27, 2004, the land described immediately above will be opened to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to February 27, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 9 a.m. on February 27, 2004, the land described immediately above will

be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights because Congress has provided for such determinations in local courts.

(Authority: 43 CFR 2911.2–3(a); 43 CFR 2091.4–2(b))

Dated: November 21, 2003.

Gail G. Givens,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 04–1798 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Stewardship End Result Contracting

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Guidance Issuance.

SUMMARY: The Bureau of Land Management (BLM) is issuing guidance to its field offices on stewardship end result contracting (commonly referred to as ''stewardship contracting'') projects. This guidance provides internal administrative direction to guide BLM employees in collaborative planning, implementing, and monitoring of stewardship contracting projects.

EFFECTIVE DATE: This guidance is effective on January 28, 2004.

ADDRESSES: This guidance is available electronically at *http://www.blm.gov/nhp/spotlight/forest_initiative/stewardship_contracting/.*

FOR FURTHER INFORMATION CONTACT: Laura Ceperley, Renewable Resources and Planning, Bureau of Land Management at (202) 452–5029; or Scott Lieurance, Renewable Resources and Planning, Bureau of Land Management at (202) 452–0316. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the BLM and the Forest Service adopted jointly developed interim guidelines for implementation of the stewardship contracting provisions as authorized by section 323 of Public Law 108–7, the Consolidated Appropriations Resolution, 2003 (16 U.S.C. 2104 note). The Forest Service and BLM published a joint **Federal Register** notice with request for comment on the interim guidelines on June 27, 2003 (68 FR 38285). The agencies received sixty-two (62) responses in the form of letters, faxes, and e-mail messages regarding the **Federal Register** notice of the interim guidelines on stewardship contracting. The comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and Federal agencies. Comments ranged from full support of the interim guidelines to the recommendation that the BLM should not use much of the authority set out in 16 U.S.C. 2104 note. The Bureau considered all comments in drafting the BLM guidance for stewardship contracting, and made changes in response to the comments. The BLM is issuing the guidance in Instruction Memorandum 2004–081. This represents the culmination of the BLM's internal and public reviews of stewardship contracting policy.

Dated: January 16, 2004.

James M. Hughes,

Deputy Director for Policy.

[FR Doc. 04–1799 Filed 1–27–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[89% to CO–956–1420–BJ–0000–241A; 11% to CO–956–7130–BJ–7385–241A]

Colorado: Filing of Plats of Survey

January 14, 2004.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 14, 2004. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey in section 24, Township 9 South, Range 81 West, Sixth Principal Meridian, Group 1254, Colorado, was accepted October 9, 2003.

The plat representing the dependent resurvey and survey, in Township 6 South, Range 94 West, Sixth Principal Meridian, Group 1357, Colorado, was accepted October 20, 2003.

The plat (in 4 sheets), representing the dependent resurveys and surveys in Township 33 North, Range 11 East, New Mexico Principal Meridian, Group 1371, Colorado, was accepted October 31, 2003.

The plat (in 4 sheets), representing the dependent resurveys and surveys in Township 34 North, Range 11 East, New Mexico Principal Meridian, Group 1371, Colorado, was accepted October 31, 2003.

The plat representing the dependent resurveys and surveys in Township 35 North, Range 11 East, New Mexico Principal Meridian, Group 1371, Colorado, was accepted October 31, 2003.

The plat, of the entire record, representing the dependent resurvey in Township 44 North, Range 5 West, New Mexico Principal Meridian, Group 1393, Colorado, was accepted November 6, 2003.

The plat representing the dependent resurveys and surveys in Township 7 South, Range 91 West, Sixth Principal Meridian, Group 1323, Colorado, was accepted December 1, 2003.

The supplemental plat canceling lots 1 through 4, and to correct annotated distances on the E. and W. centerline in section 7, Township 4 South, Range 100 West, Sixth Principal Meridian, Colorado, was accepted October 9, 2003.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurvey of certain mineral surveys and the metes-and-bounds survey of a portion of Ouray County Road No. 361, in Township 43 North, Range 8 West, New Mexico Principal Meridian, Group 1404, Colorado, was accepted December 17, 2003.

This survey and plat was requested by the legal staff of Ouray County, Colorado, for the purpose of segregating Public Domain lands from adjacent boundary lines of certain mineral surveys.

Paul Lukacovic,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 04–1786 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of conference call.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (P.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The AMWG will conduct the following conference call:

Thursday, January 29, 2004. The conference call will begin at 9 a.m. and conclude at 11 a.m. Mountain Time.

Agenda: The purpose of the conference call will be to: (1) seek feedback from the AMWG on Western Area Power Administration's proposal to modify the experimental flows during January–March of 2004; and (2) identify proposed changes in the use of remote sensing to monitor resources in the Colorado River ecosystem beginning in 2004 and seek feedback from the AMWG.

Due to a need to present the above information for discussion at the Adaptive Management Work Group Meeting on March 3–4, 2004, this notice may be published in a shorter time period than normally required by the Federal Advisory Committee Act. However, an e-mail message will be sent by Reclamation to those persons who have expressed interest in the Glen Canyon Dam Adaptive Management program to allow them full participation on the conference call.

To register for the conference call, please contact Linda Whetton at (801) 524–3880 to obtain the phone number and password.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: January 22, 2004.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 04–1768 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0057 and 1029–0087

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR Part 882, Reclamation of private lands; and 30 CFR 886.23(b) and Form OSM–76, Abandoned Mine Land Problem Area Description form. The collections described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collections and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 27, 2004, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted requests to OMB to approve the collections of information for 30 CFR Part 882, Reclamation of private lands; and 30 CFR 886.23(b) and its implementing Form OSM–76, Abandoned Mine Land Problem Area Description form. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are displayed in 30 CFR 882.10 for Part 882 (1029–0057), and on the form OSM–76 for 30 CFR 886.23(b) (1029–0087).

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 30, 2003 (68 FR 61828). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Reclamation on Private Lands, 30 CFR 882.

OMB Control Number: 1029–0057.

Summary: Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 16.

Title: 30 CFR 886.23(b) and the Abandoned Mine Land Problem Area Description Form, OSM–76.

OMB Control Number: 1029–0087.

Summary: The regulation at 886.23(b) and its implementing form OSM–76 will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious

problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM–76.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 04–1780 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0080 and 1029–0089

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR Part 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; and 30 CFR Part 850, Permanent Regulatory Program Requirements—Standards for Certification of Blasters, have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 27, 2004, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR parts 702 and 850. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0089 for part 702 and 1029–0080 for part 850, and may be found in OSM's regulations at 702.10 and 850.10.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on October 30, 2003 (68 FR 61828). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR Part 702.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals and the State regulatory authorities.

Total Annual Responses: 90.

Total Annual Burden Hours: 581.

Title: Permanent regulatory program requirements—standards for certification of blasters, 30 CFR 850.

OMB Control Number: 1029–0080.

Summary: This part establishes the requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authorities.

Total Annual Responses: 1.

Total Annual Burden Hours: 173.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: January 6, 2004.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 04–1781 Filed 1–27–04; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–499]

In the Matter of Certain Audio Digital-to-Analog Converters and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation To Add Another Patent and Eight Patent Claims

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 5) granting a motion to amend the complaint and notice of investigation to add allegations of infringement of five additional claims of U.S. Patent No. 6,492,928 B1 (''the '928 patent'') and three claims of U.S. Patent No. 6,011,501 (''the '501 patent'').

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 2003, based on a complaint filed on behalf of Cirrus Logic, Inc. of Austin, Texas. 68 FR 64641 (Nov. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of the '928 patent. The notice of investigation named two respondents: Wolfson Microelectronics, PLC of Edinburgh, United Kingdom; and Wolfson Microelectronics, Inc. of San Diego, Calif. (collectively ''Wolfson''). *Id.*

On December 9, 2003, complainant moved pursuant to Commission rule 210.14(b) to amend the complaint and notice of investigation to add five additional claims of the single patent in issue and three claims of another patent to the scope of the investigation, *viz.*, claims 2, 3, 5, 6, and 15 of the '928 patent, and claims 9, 12, and 19 of the '501 patent. On December 17, 2003, the Commission investigative attorney filed a response supporting the motion. In a response dated December 17, 2003, Wolfson opposed complainant's motion to the extent that it sought to add the '501 patent to this investigation. The parties presented oral argument at a preliminary conference on December 18, 2003. Pursuant to a request by the ALJ at the preliminary conference, complainant and Wolfson filed supplemental submissions on December 23, 2003.

On December 29, 2003, the ALJ issued an ID (Order No. 5) granting the motion to amend the complaint and notice of investigation to add claims 2, 3, 5, 6, and 15 of the '928 patent, and claims 9, 12, and 19 of the '501 patent. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: January 21, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–1739 Filed 1–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 and 731–TA–1024–1028 (Final)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Korea, Mexico, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India of prestressed concrete steel wire strand (PC strand) that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of India and by reason of imports from Brazil, India, Korea, Mexico, and Thailand of PC strand that have been found by Commerce to be sold in the United States at less than fair value (LTFV). The subject merchandise is provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States.

Background

The Commission instituted these investigations effective January 31, 2003, following receipt of petitions filed with the Commission and Commerce by American Spring Wire Corp., Bedford Heights, OH; Insteel Wire Products Co., Mt. Airy, NC; and Sumiden Wire Products Corp., Stockton, CA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of PC strand from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of PC strand from Brazil, India, Korea, Mexico, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 4, 2003 (68 FR 52614). The hearing was held in Washington, DC, on December 2, 2003, and all persons who requested the

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 2004. The views of the Commission are contained in USITC Publication 3663 (January 2004), entitled *Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand: Investigations Nos. 701–TA–432 and 731–TA–1024–1028 (Final).*

Issued: January 22, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–1741 Filed 1–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Preliminary)]

Wooden Bedroom Furniture From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from China of wooden bedroom furniture, provided for in subheading 9403.50.90 of the Harmonized Tariff Schedule of the United States (HTS),[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 31, 2003, a petition was filed with the Commission and Commerce by the American Furniture Manufacturers Committee For Legal Trade, Washington, DC, and its individual members; Cabinet Makers, Millmen, and Industrial Carpenters Local 721, Whittier, CA; UBC Southern Council of Industrial Workers Local Union 2305, Columbus, MS; United Steel Workers of America Local 193U, Lewisburg, PA; Carpenters Industrial Union Local 2093, Phoenix, AZ; and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991, Bay Minette, AL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of wooden bedroom furniture from China. Accordingly, effective October 31, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1058 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 10, 2003 (68 FR 63816). The conference was held in Washington, DC, on November 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 12, 2004. The views of the Commission are contained in USITC Publication 3667 (January 2004), entitled *Wooden Bedroom Furniture from China: Investigation No. 731–TA–1058 (Preliminary).*

Issued: January 21, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–1740 Filed 1–27–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Pearson makes a determination of threat of material injury.

[3] Subject merchandise may also be provided for in HTS subheadings 7009.92.50 and 9403.90.70.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,147; TA–W–53,147A]

Eagle Picher, Inc., Hillsdale, Michigan; and Eagle Picher, Inc., Jonesville, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 21, 2003, applicable to workers of Eagle Picher, Inc., located in Hillsdale, Michigan. The notice will soon be published in the **Federal Register**.

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. Workers of Eagle Picher, Inc. in Hillsdale, Michigan, produce precision machined components and assemblies for the automotive industry.

Review of the file shows that the Department inadvertently excluded workers separated from employment at Eagle Picher, Inc. in Jonesville, Michigan. The workers at the Jonesville location are part of the vertically integrated production of precision machined components and assemblies at Eagle Picher, Inc. in Hillsdale, Michigan.

It is the Department's intent to include all workers of Eagle Picher affected by increases in imports. Accordingly, the Department is amending the certification to include workers of Eagle Picher in Jonesville, Michigan.

The amended notice applicable to TA–W–53,147 is hereby issued as follows:

All workers of Eagle Picher, Inc., Hillsdale, Michigan (TA–W–53,147), and Eagle Picher, Inc., Jonesville, Michigan (TA–W–53,147A), who became totally or partially separated from employment on or after September 26, 2002, through November 21, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–136 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,569]

Irving Tanning Company, Hartland, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and under section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2003, applicable to workers of Irving Tanning Company located in Hartland, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce leather.

The review shows that all workers of Irving Tanning Company, Hartland, Maine, were previously certified eligible to apply for adjustment assistance under petition number TA–W–39,075, which expired on July 13, 2003.

Therefore, in order to avoid an overlap in worker group coverage, the Department is amending the November 6, 2002, impact date established for TA–W–53,569, to read July 14, 2003.

The amended notice applicable to TA–W–53,569 is hereby issued as follows:

All workers of Irving Tanning Company, Hartland, Maine, who became totally or partially separated from employment on or after July 14, 2003, through December 11, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–134 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,801; TA–W–50,801A]

Johnston Industries Alabama, Inc., Opp & Micolas Mills, Opp, Alabama; and Johnston Industries, Inc., New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 9, 2003, applicable to workers of Johnston Industries Alabama, Inc., Opp & Micolas Mills, Opp, Alabama. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of window treatment fabrics for the textile industry.

Information shows that worker separations occurred at the New York, New York location of the subject firm. The workers provided sales and design functions for the subject firm's production facility located in Opp, Alabama.

Accordingly, the Department is amending the certification to include workers of Johnston Industries, Inc., New York, New York.

The intent of the Department's certification is to include all workers of Johnston Industries Alabama, Inc., Opp & Micolas Mills who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,801 is hereby issued as follows:

All workers of Johnston Industries Alabama, Inc., Opp & Micolas Mills, Opp, Alabama (TA–W–50,801) and Johnston Industries, Inc., New York, New York (TA–W–50,801A), who became totally or partially separated from employment on or after February 4, 2002, through April 9, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of January, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–140 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,493]

Moltech Power Systems, a Subsidiary Of Moltech Holding Corp., Including Leased Workers of Gevity Hr, Gainesville, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on January 27, 2003, applicable to workers of Moltech Power Systems, a subdivision of Moltech Holding Corporation, Gainesville, Florida. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of NiCd and NiMh rechargeable batteries.

Information provided by the company shows that all workers of the Gainesville, Florida location of the subject firm are leased workers of Gevity hr.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Gevity hr employed at Moltech Power Systems, a subsidiary of Moltech Holding Corporation at the Gainesville, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Gevity hr working at Moltech power Systems, a subsidiary of Moltech Holding Corporation, Gainesville, Florida.

The intent of the Department's certification is to include all workers of Moltech Power Systems, a subsidiary of Moltech Holding Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,493 is hereby issued as follows:

All workers of Moltech Power Systems, a subsidiary of Moltech Holding Corporation, including leased workers of Gevity hr, Gainesville, Florida, who became totally or partially separated from employment on or after December 12, 2002, through January 27, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of January, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–141 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,611B and TA–W–51,611C]

National Steel Corporation, United States Steel Corporation, Great Lakes Operations, Including Leased Workers of Vanguard Services, Inc., Employed by TMH, Ecorse, Michigan; National Steel Corporation, United States Steel Corporation, Midwest Operations, Including Leased Workers of Vanguard Services, Inc., Employed by TMH, Portage, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 2003, applicable to workers of National Steel Corporation, Great Lakes Operations, Ecorse, Michigan and Midwest Operations, Portage, Indiana. The notice was published in the **Federal Register** on July 22, 2003 (68 FR 43371).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of flat rolled steel.

New information shows that leased workers of Vanguard Services, Inc. were employed at the Great Lakes Operations, Ecorse, Michigan and Midwest Operations, Portage, Indiana locations of National Steel Corporation. Workers of Vanguard Services, employed by TMH, provide truck drivers to TMH, the trucking company for National Steel Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of National Steel Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,611B and TA–W–51,611C are hereby issued as follows:

All workers of National Steel Corporation (NSC), United States Steel Corporation, Great Lakes Operations, Ecorse, Michigan, including leased workers of Vanguard Services, Inc., employed by TMH, providing truck drivers to TMH at National Steel Corporation (NSC), United States Steel Corporation, Great Lakes Operations, Ecorse, Michigan (TA–W–51,611B); and, National Steel Corporation, United States Steel Corporation, Midwest Operations, Portage, Indiana, including leased workers of Vanguard Services, Inc., employed by TMH, providing truck drivers to TMH at National Steel Corporation (NSC), United States Steel, Midwest Operations, Portage, Indiana (TA–W–51,611C) who became totally or partially separated from employment on or after April 8, 2002, through July 9, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of January 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–138 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,174; TA–W–53,174A]

Sinclair Collins, Div. of Parker Hannafin Corp., Akron, Ohio, Including an Employee of Sinclair Collins, Div. of Hannafin Corporation, Located in Nashville, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 12, 2003, applicable to workers of Sinclair Collins, div. of Parker Hannafin Corporation, Akron, Ohio. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. New information shows that a worker was separated involving an employee of the Akron, Ohio facility of Sinclair Collins, div. of Parker Hannafin Corporation located in Nashville, Tennessee. This employee provided sales, marketing, warranty issues and general support services for the production of industrial valves for tire manufacturers at the Akron, Ohio location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Akron, Ohio facility of Sinclair Collins, div. of Parker Hannafin Corporation, located in Nashville, Tennessee.

The intent of the Department's certification is to include all workers of Sinclair Collins, div. of Parker Hannafin Corporation, Akron, Ohio, who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,174 is hereby issued as follows:

All workers of Sinclair Collins, div. of Parker Hannafin Corporation, Akron, Ohio (TA–W–53,174), including an employee of Sinclair Collins, div. of Parker Hannafin Corporation, Akron Ohio, located in Nashville, Tennessee (TA–W–53,174A), who became totally or partially separated from employment on or after October 1, 2002, through November 12, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–135 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,903]

Straits Steel & Wire, Rowe Engineering, Ludington, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 14, 2003, applicable to workers of Straits Steel & Wire, Ludington, Michigan. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62834).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of display shelving and baskets for refrigerators.

New information shows that Straits Steel & Wire and Rowe Engineering are subsidiaries of SSW Holding. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Rowe Engineering.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Straits Steel & Wire, Ludington, Michigan, who were adversely affected by increased imports.

The amended notice applicable to TA-W-52,903 is hereby issued as follows:

All workers of Straits Steel & Wire, Rowe Engineering, Ludington, Michigan, engaged in the production of display shelving and baskets, who became totally or partially separated from employment on or after September 8, 2002, through October 14, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of January, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–137 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,834 and TA–W–50,834B]

TSI Graphics, Inc., Effingham, Illinois, Including an Employee of TSI Graphics, Inc. Located in Los Angeles, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 8, 2003, applicable to workers of TSI Graphics, Inc., Effingham, Illinois. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving an employee of the Effingham, Illinois facility of TSI Graphics, Inc. located in Los Angeles, California. This employee provided sales services supporting the production of textbook color work/graphics as disk-to-plate files at the Effingham, Illinois location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Effingham, Illinois facility of TSI Graphics, Inc., located in Los Angeles, California.

The intent of the Department's certification is to include all workers of TSI Graphics, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,834 is hereby issued as follows:

All workers of TSI Graphics, Inc., Effingham Illinois (TA–W–50,834), including an employee of TSI Graphics, Inc., Effingham, Illinois, located in Los Angeles, California (TA–W–50,834B), who became totally or partially separated from employment on or after February 5, 2002, through April 8, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–139 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,791]

Vanguard Services, Inc., Highland, Indiana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 12, 2003, in response to a petition filed by a representative of the Transportation-Communications International Union, AFL–CIO, CLC on behalf of workers of Vanguard Services, Inc., Highland, Indiana.

Two previous certifications (TA–W–51,611B and TA–W–51,611C) have been amended to include the petitioning worker group. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of January, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–133 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension for State Income and Eligibility Verification provisions of the Deficit Reduction Act.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 29, 2004.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room S4231, Washington, DC 20210, Attention: Diane Wood. Telephone number: 202–693–3212 (this is not a toll-free number). Fax: 202–693–3975. E-mail: *wood.diane@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Deficit Reduction Act of 1984 established an income and eligibility verification system for the exchange of information among state agencies administering specific programs. The programs include Temporary Assistance for Needy Families, Medicaid, Food Stamps, Supplemental Security Income, Unemployment Compensation and any state program approved under Title I, X, XIV, or XVI of the Social Security Act. Under the Act, programs participating must exchange information to the extent that it is useful and productive in verifying eligibility and benefit amounts to assist the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under Titles II and XVI of the Social Security Act.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

As the only continuous source of income and eligibility verification, the data is required by other agencies to administer and monitor multiple programs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Income and Eligibility.

OMB Number: 1205–0238.

Agency Number: None.

Record Keeping: State governments.

Affected Public: State governments.

Cite/Reference/Form/etc: Section 303 of Title III of the Social Security Act.

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 39,388 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 20, 2004.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 04–1787 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will meet February 12 and 13, 2004 in Chicago, Illinois. This meeting is open to the public.

Time and Date: ACCSH will meet from 9 a.m. to 5 p.m., Thursday, February 12, and, if necessary, 8:30 a.m. to Noon on Friday, February 13, 2004.

Place: ACCSH will meet at the Embassy Suites Hotel, 5500 North River Road, Rosemont, IL.

FOR FURTHER INFORMATION CONTACT: For general information about ACCSH and the ACCSH meetings: Steve Cloutier, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020. For information about submission of comments, requests to speak, and the need for accommodations at the meeting: Veneta Chatmon, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Electronic copies of this **Federal Register** notice, as well as information about ACCSH workgroups and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: ACCSH will meet February 12, and, if necessary, 8:30 a.m. to Noon on Friday, February 13, 2004, in Chicago, Illinois. This meeting is open to the public. The agenda for this meeting includes:

• Remarks by the Assistant Secretary for Occupational Safety and Health, John L. Henshaw.

• Crane and Derrick Negotiated Rulemaking Advisory Committee Update.

• Directorate of Standards and Guidance Report on the Current Status of Ongoing Health Standards and Their impact on Construction, including: Chromium, Silica and Hearing Conservation.

• Update on Partnerships and Alliances in Construction.

• Hispanic Workforce in Construction.

• Other Committee Reports.

• Public Comments (members of the public who wish to address ACCSH, please see the information below to request time to speak at the meeting).

All ACCSH meetings are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625 at the address above, telephone (202) 693–2350. Individuals needing special accommodations should contact Ms. Chatmon no later than January 28, 2004 at the address above. Interested parties may submit written data, views or comments, preferably with 20 copies, to Ms. Chatmon at the address above. OSHA will provide submissions received prior to the meeting to ACCSH members, and it will include each submission in the record of the meeting. Attendees also may request to make an oral presentation by notifying Ms. Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.,* the name of the business, trade association, government Agency, etc.), if any, and a brief outline of the presentation. The Chair of ACCSH may grant the request at his discretion and as time permits.

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, January 22, 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 04–1788 Filed 1–27–04; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory

instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 15, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: records.mgt@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Military Services Personnel Command (N1–330–04–1, 3 items, 2 temporary items). Paper, microform, or electronic source documents used to create electronic official military personnel files documenting the career of each officer and enlisted member of the military (including members of the Coast Guard) from time of entry into service until final separation. Also included are documents within individual files whose destruction is mandated by the appropriate Military Service Secretary acting through the Military Corrections Board. Recordkeeping copies of these files are proposed for permanent retention. Files for current active, reserve, and guard personnel are maintained in imaged record systems operated by each of the Military Services. Older records are paper and/or microform.

2. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–04–2, 9 items, 9 temporary items). Inputs, outputs, master files, and documentation associated with the enforcement operational database used to maintain immigration control, including the identification, apprehension, and removal of aliens unlawfully entering or present in the country.

3. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–04–3, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic tracking system used in processing applications and petitions submitted by individuals requesting immigration benefits.

4. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–04–4, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic tracking system used to process and track applications associated with naturalization and/or citizenship and to replace naturalization/citizenship certificates.

5. Department of Homeland Security, Bureau of Citizenship and Immigration Services N1–563–04–5, 5 items, 5 temporary items). Inputs, outputs, master files, and documentation associated with the Refugee Access Verification System, which is used to review and verify family relationships of refugees applying for admission into the United States.

6. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–04–7, 5 items, 5 temporary items). Inputs, outputs, master files, and documentation associated with the Asylum Pre-screening System, an electronic system used to manage, control, and track adjudication actions.

7. Department of Homeland Security, Bureau of Citizenship and Immigration Services (N1–563–04–8, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic records system used to create Certificates of Citizenship for foreign-born children of American citizens, including adopted children.

8. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–03–3, 5 items, 5 temporary items). Master files, outputs, and documentation associated with the Forfeited Asset Tracking System, an

electronic system used to track seized and forfeited property and to ensure that agency employees follow uniform and accurate forfeiture procedures. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Justice, United States Marshals Service (N1–527–04–1, 3 items, 3 temporary items). Forms relating to sequestered juries. These records pertain to such matters as instructions to the jury, room assignments, authorized visitors, incoming and outgoing mail, and transportation. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–3, 8 items, 7 temporary items). Case and subject files relating to litigation or the agency's legal position. Included are correspondence, memorandums, and other records. Reports relating to litigation are also included as are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of historically significant files are proposed for permanent retention.

11. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–13, 5 items, 4 temporary item). Orders, schedules, logs, and other records relating to ink manufacturing and production. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of research and development records pertaining to inks used in printing currency and other agency products are proposed for permanent retention.

12. Department of the Treasury, Office of Thrift Supervision (N1–483–04–1, 7 items, 6 temporary items). Working papers relating to examinations of thrifts, holding companies, and IT service providers, which were previously scheduled for permanent retention. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of corporate structure files are proposed for permanent retention.

13. Environmental Protection Agency, Office of Environmental Information (N1–412–03–17, 3 items, 3 temporary items). Electronic software programs, electronic data, and system documentation associated with an electronic system used for compliance reports received from industry and Government partners.

14. Environmental Protection Agency, Office of the Administrator (N1–412–03–21, 2 items, 2 temporary items). Records relating to discrimination complaints filed by individuals or groups alleging civil rights violations by agency-funded entities. Also included are electronic copies of records created using electronic e-mail and word processing.

15. National Archives and Records Administration, Office of Records Services—Washington, DC (N1–64–04–3, 2 items, 1 temporary item). Working papers and background information used to prepare a report relating to the disposal of certain Naval Research Laboratory records stored at the Washington National Records Center. Proposed for permanent retention is the recordkeeping copy of the final report.

16. Tennessee Valley Authority, Labor Relations (N1–142–04–4, 5 items, 5 temporary items). Records relating to labor negotiations, including agency appeals to the Department of Labor. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: January 4, 2004.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 04–1738 Filed 1–27–04; 8:45 am]

BILLING CODE 7515–01–P

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: Heather Gottry, 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:* February 2, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Western Culture, submitted to the Division of Research Programs at the November 3, 2003, deadline.

2. *Date:* Febuary 3, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Scholarly Editions III in Literature and Music, submitted to the Division of Research Programs at the November 3, 2003, deadline.

3. *Date:* February 4, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Arts and Letters, submitted to the Division of Research Programs at the November 3, 2003, deadline.

4. *Date:* February 5, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Philosophy, Science and Linguistics, submitted to the Division of Research Programs at the November 3, 2003, deadline.

5. *Date:* February 5, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Historic Sites, History Museums and Media, submitted to the Office of Challenge Grants at the November 3, 2003, deadline.

6. *Date:* February 6, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Non-Western Cultures, submitted to the Division of Research Programs at the November 3, 2003, deadline.

7. *Date:* February 10, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Research Institutions and Initiatives, submitted to the Office of Challenge Grants at the November 3, 2003, deadline.
8. *Date:* February 10, 2004.
Time: 9 a.m. to 5 p.m.
Room: Library of Congress—Room LJ–113.
Program: This meeting will review applications for The Americas, submitted to the Division of Research Programs at the November 3, 2003, deadline.
9. *Date:* February 17, 2004.
Time: 9 a.m. to 5 p.m.
Room: Library of Congress—Room LJ–113.
Program: This meeting will review applications for Africa, Asia, Europe, and the Middle East, submitted to the Division of Research Programs at the November 3, 2003, deadline.
10. *Date:* February 20, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Art and Anthropology—Stabilization of Collections, submitted to the Division of Preservation and Access at the November 3, 2003, deadline.
11. *Date:* February 27, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for History—Stabilization of Collections, submitted to the Division of Preservation and Access at the November 3, 2003, deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.
[FR Doc. 04–1754 Filed 1–27–04; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: February 5, 2004: 10:30 a.m.–4 p.m.

10:15–11:15 Open Session.
11:15–12:15 Open Session.
12:15–12:30 Open Session.
12:45–1:15 Open Session.
1–1:15 Closed Session.
1:15–1:30 Closed Session.
1:30–4 Open Session.

PLACE: Xavier University of Louisiana, University Library, 1 Drexel Drive, New Orleans, LA 70125, *www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: Michael P. Crosby, Executive Officer, (703) 292–7000.

STATUS: Part of this meeting will be closed to the public.

Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 5, 2004

Open

Committee on Education & Human Resources (10:15 a.m.–11:15 a.m.), Board Room.

- Minutes
- Comments from Chair
- Response to Broadening Participation Workshop Report
- Briefing on NSF Programs that Address Minority-Serving Institutions

Committee on Programs & Plans (11:15 a.m.–12:15 p.m.), Board Room.

- High Risk Research
- Long-Lived Data Collections
- NRC Report on Setting Priorities for NSF-Sponsored Large Research Facility Projects

Committee on Strategy and Budget (12:15 p.m.–12:30 p.m.), Board Room.

- Approval of Minutes and Chair's Remarks
- Update on the Authorization Act Section 22 Report to Congress
- Committee Members' Suggestions for CSB Activities in 2004

Executive Committee (12:45 p.m.–1 p.m.), IT Room.

- Approval of Minutes

Plenary Session of the Board (1:30 p.m.–4 p.m.), Board Room.

- Open Minutes
- Resolution to Close March 2004
- Chairman's Report, including
  - Awards & Nominations Committee Appointments
- Director's Report, including
  - Overview of NSF FY 2005 Budget
- Committee Reports, including
  - Update on *S&E Indicators 2004*
  - Update on *Realizing America's Potential*
  - Long-Lived Data Collections
  - High Risk Research
  - Discussion of NRC Report on MREFC Priorities
  - Discussion of NAPA Report on NSF Organization & Structure
- Presentation to the Board
  - NSF Funding of Smithsonian & Other Federal Researchers

Closed

Executive Committee (1 p.m.–1:15 p.m.), IT Room.

- Director's Items, including
  - Specific Personnel Matters
  - Future Budgets

Plenary Session of the Board (1:15 p.m.–1:30 p.m.), Board Room.

- Closed Minutes
- Reports of Closed Committees, If Any
- Staff Announcements

Michael P. Crosby,
Executive Officer, NSB.
[FR Doc. 04–1896 Filed 1–26–04; 9:33 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI). The agenda is under development, but will relate to issues arising from the revised 10 CFR part 35, Medical Use of Byproduct Material. To review agenda items as they become available, see *http://www.nrc.gov/reading-rm/doc-collections/ acmui/schedules/2004/* or contact*arw@nrc.gov.*

DATES: ACMUI will hold a public meeting on March 1, 2004, from 8 a.m. to 5 p.m. On March 2, the ACMUI will convene at 8 a.m. for its public meeting, but will brief the Commission from 9:30 a.m.–12 p.m. At 1 p.m. on March 2, the ACMUI will recconvene, if necessary, to continue its public meeting until 5 p.m. The meeting and the Commission briefing will take place at the addresses provided below.

ADDRESSES: *For Commission Briefing:* U.S. Nuclear Regulatory Commission, One White Flint North Building, Commissioners' Conference Room 1G16, 11555 Rockville Pike, Rockville, MD, 20852–2738.

For Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Auditorium, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct

the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela R. Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by February 9, 2004, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about March 22, 2004. Minutes of the meeting will be available on or about May 3, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated: January 23, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E4–131 Filed 1–27–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49117; File No. SR–BSE–2003–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend Trading Hours From 8 a.m. Until 9:28 a.m., and From 4:16 p.m. Until 6:30 p.m. To Allow for the Execution of Matched Orders Only

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2003, the Boston Stock Exchange, Inc. (''BSE'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to add a new chapter relating to the execution of transactions during an extended hours session. The text of the proposed rule change is available at the BSE 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 BSE 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 BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Chapter IIC to its Rules in order to provide for the facilitation of certain orders outside of the regular 9:30 a.m. to 4 p.m. Primary Session, and the 4:01 p.m. to 4:15 p.m. Post Primary Session. Specifically, the Exchange is seeking to extend trading hours from 8 a.m. until 9:28 a.m., and from 4:16 p.m. until 6:30 p.m. to allow for the execution of matched orders only. All orders for execution during the Extended Trading Session (''ETS'') would need to be specifically designated and submitted with a contra order, matched in price and size. The BSE believes that the addition of the ETS will allow the BSE to more effectively compete with other exchanges that operate similar extended hours trading sessions.

During the ETS, the Exchange's auction market rules would apply, as during Primary Session trading hours, with minor exceptions. Although no book quote will be available, the Exchange will comply with the requirements of Rule 11Ac1–1 under the Act[3] and supply a quotation in all securities, which will be traded during the ETS. Additionally, the BSE's Execution Guarantee Rule, as set forth in Chapter II, Section 33 of its Rules, will not apply as it is specifically tailored to the acceptance of market and marketable limit orders. Since there is no National Best Bid and Offer (''NBBO'') established outside of the Primary Session, there is no way to establish what would constitute a market or marketable limit order. Moreover, the ETS is designed so as to permit the execution of matched orders only, so the concept of market or marketable limit orders does not apply.

Due to the fact that trading at any time other than the Exchange's Primary Session involves certain risks, the BSE will not permit its members to accept any orders for execution in the ETS without making certain disclosures to its customers. The BSE suggests a form of disclosure in its proposed rules, but mandates that the disclosure informs the customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

The Exchange will systematically reject any orders designated for execution in the ETS, but which are not submitted on both sides of the market and matched exactly as to security, size, price and time of entry (''Matched Orders''). However, the Exchange will accept orders for the Primary Session during the 8 a.m. to 9:28 a.m. period of the ETS. Any orders not specifically designated for the ETS, but submitted during the 8 a.m. to 9:28 a.m. period of the ETS, will be retained for entry into the Primary Session, and will become eligible for execution at 9:30 a.m.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1.1

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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 either solicited or 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 Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–BSE–2003–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2003–31 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1789 Filed 1–27–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49108; File No. SR–CBOE–2004–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the UMA Calculation for the CBOE Hybrid System

January 21 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 8, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On January 20, 2004, the Exchange submitted amendment No. 1 to the proposed rule change.[2] 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 CBOE proposes to allow the appropriate Index Floor Procedure Committee (''IFPC'') to vary the component weightings of the Ultimate Matching Algorithm (''UMA'') formula by product. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)(i)

(A) No change

(B)(1) No change

(B)(2) More than One Market Participant Quoting at BBO: When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to the following allocation algorithm:

Allocation Algorithm

$$\text{Incoming Order Size} * \frac{\text{(Equal Percentage based on number of market participants quoting at BBO) (Component A)} + \text{(Pro-rata Percentage based on size of market participant quotes) (Component B)}}{2}$$

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants quoting at the BBO.

Component B: Size Prorata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting *formula for equity options*, which shall be determined by the appropriate FPC *and apply uniformly across all options under its jurisdiction*, shall be a

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78(b)(1).

[2] *See* Letter from Stephen Youhn, Counsel, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated January 20, 2004. In Amendment No. 1, CBOE replaced in its entirety the original proposed rule filing.

weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage + Component B Percentage)/2)* incoming order size.

[The final weighting shall apply uniformly across all options under the jurisdiction of the appropriate FPC.] *The final weighting formula for index options and options on ETFs shall be established by the appropriate FPC and may vary by product.* Changes made to the *percentage* weightings of Components A and B shall be announced to the membership [in advance of implementation] via Regulatory Circular *at least one day before implementation of the change.*

(C) No change

(b) No change

(c)

(i) No change

(ii) Multiple Market Participant Trade with the Electronic Book: Each market participant that submits an order or quote to buy (sell) an order in the electronic book within a period of time not to exceed 5 seconds of the first market participant to submit an order (''N-second group'') shall be entitled to receive an allocation of the order in the electronic book pursuant to the following allocation algorithm:

Allocation Algorithm

$$\text{Electronic Book Order(s) Size} * \frac{\text{(Equal percentage based on number of members of "N-second group") (Component A)} + \text{(Size pro-rata percentage based on size of orders of "N-second group" members) (Component B)}}{2}$$

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of market participants in the ''N-second group.''

Component B: Size Prorata Allocation. The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that each market participant ''N-second group's'' quote at the best price represents relative to the total number of contracts of all market participants of the ''N-second group.'' The appropriate FPC may determine that the maximum quote size to be used for each market participant in the Component B calculation shall be no greater than the cumulative size of orders resident in the electronic book at the best price at which market participants are attempting to buy (sell).

Final Weighting: The final weighting *formula for equity options*, which shall be determined by the appropriate FPC *and apply uniformly across all options under its jurisdiction*, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the order(s) in the electronic book. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage + Component B Percentage)/2)* electronic book size.

The final weighting formula for index options and options on ETFs shall be established by the appropriate FPC and may vary by product. Changes made to the percentage weightings of Components A and B shall be announced to the membership via Regulatory Circular at least one day before implementation of the change.

(A) No change

(iii)–(iv) 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2003, the Commission approved the CBOE's Hybrid System (''Hybrid System'').[3] The Hybrid System merges the electronic and open outcry trading models, offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. The Exchange currently trades equity options on Hybrid and recently commenced trading of index option and ETF option on Hybrid (''Index Hybrid filing'').[4] As described in the Index Hybrid filing, the Exchange has the ability to trade on Hybrid index options and options on ETFs pursuant to the existing Hybrid rules currently applicable to equity options.

CBOE Rule 6.45A governs the priority and allocation of trades on the CBOE Hybrid System. Paragraphs (a) and (c) of CBOE Rule 6.45A contain the UMA allocation model, which is a weighted formula that incorporates and blends the concepts of parity (Component A) and size prorata distribution (Component B). With respect to equity option trading, UMA assigns equal weighting percentages to Components A and B. Currently, all products under the jurisdiction of each floor procedure committee must utilize the same UMA weighting percentages (*i.e.,* Components A and B must be weighted the same in all products under that FPC's jurisdiction). The purpose of this rule filing is to amend Rule 6.45A(a) and (c) to allow the appropriate index FPC (''Index FPC'' or ''IFPC'') to vary the final weighting percentages of Components A and B by index or ETF option product. For example, the IFPC may determine to weight Components A and B 50–50% for index XYZ while weighting the same components (60–40% for index ABC. The rule will remain unchanged on the equity side, thus, all equity options under the jurisdiction of the equity FPC must have the same UMA component weightings.

The Exchange believes it is appropriate to allow the IFPC to vary the weightings of Components A and B by product for several reasons. First, the size of trading crowds can vary dramatically by index/ETF option product. The ability to increase or decrease the percentage of Component A may serve as a better inducement to competitive quoting than would an

[3] Exchange Act Release 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (''Hybrid Release'').

[4] Exchange Act Release 48953 (December 18, 2003), 68 FR 75004 (December 29, 2003) (order approving SR–CBOE–2003–57).

equal-weighted formula.[5] Second, because the composition of trading crowds varies by product, it is highly likely that some index/ETF option crowds may consist of more larger capitalized market-making organizations than do other crowds, thus increasing the possibility that a ''deep pocketed'' market maker could ''size out'' his smaller counterparts, thereby reducing their incentive to quote competitively. Varying the weightings by product would allow the IFPC to take into account this factor and adjust the weightings accordingly so as to enhance competition. A third reason involves the trading characteristics of the index/ETF option product. In less liquid products, the IFPC may determine that increasing the weighting of Component B serves to enhance better quoting competition. Finally, index prices can be much higher and fluctuate far more on the index/ETF option side, which can significantly affect a trader's risk profile. For example, the NDX index level (as of Mid December) was approximately 1400. Strike prices on the NDX ranged from $500–1800 (in $25 and/or $50 increments).[6] The ability to vary the weightings of Components A and B will allow the IFPC to take into account the potential for tremendous swings in notional value due to the fluctuations in the indexes and the risk such swings can pose to traders.

The proposed rule requires that each time it changes the final weightings of UMA on a per product basis, it will provide at least one-day's advance notice to the membership via Regulatory Circular. This precludes intra-days adjustments and serves to ensure sufficient advance notice to affected parties.[7]

2. Statutory Basis

The Exchange believes that allowing the IFPC to establish weightings for Components A and B of the UMA calculation at different levels for different index options and ETF option products will help to ensure optimal liquidity in each of these products under its jurisdiction. For this reason, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2004–01 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1759 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–M

[5] For example, less active indexes, such as the S&P Small Cap 600, may have trading crowds consisting of less than five market makers. More active indexes, such as the QQQ, may have as many as 20 market makers in the trading crowd. A ''one-size-fits-all'' weighting methodology for UMA may not produce optimal results in indexes with such disparate sized trading crowds.

[6] The premium for the 775 DEC call was bid at $615.

[7] In this respect, the Exchange has not changed the UMA weighting percentages for Components A and B on the equity side since implementation of trading on Hybrid.

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49111; File No. SR–CBOE–2003–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on Certain Russell Indexes

January 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On November 25, 2003, the Exchange filed an amendment to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change.[3] On January 6, 2004, the Exhange filed another amendment to the proposed rule change.[4] 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 CBOE proposes to amend certain rules to provide for the listing and trading on the Exchange of options on the following broad-based indexes:

Russell Top 200® Index
Russell Top 200® Growth Index
Russell Top 200® Value Index

The Exhange represents that options on these indexes will be cash-settled and will have European-style exercise provisions.

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 CBOE included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style, stock index options on the Russell Top 200'' Index, Russell Top 200® Growth Index and Russell Top 200® Value Index (''Russell 200 Indexes''). Each Russell 200 Index is a capitalization-weighted index containing various groups of stocks drawn from the 200 largest companies in the Russell 1000 Index, which is drawn from the largest 3,000 companies incorporated in the U.S. and its territories. These 3,000 companies represent approximately 98% of the investable U.S. equity market. The Exchange represents that all index components are traded on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''AMEX''), or the NASDAQ and are ''reported securities'' as defined in Rule 11Aa3–1 of the Act. CBOE currently is approved to trade options on the following Russell Indexes.[5]

Russell 2000® Index
Russell 2000® Growth Index
Russell 2000® Value Index
Russell 1000® Index
Russell 1000® Growth Index
Russell 1000® Value Index
Russell 3000® Index
Russell 3000® Growth Index
Russell 3000® Value Index
Russell MidCap® Index
Russell MidCap® Growth Index
Russell MidCap® Value Index

Index Design

Each of the three Russell 200 Indexes is designed to be a comprehensive representation of the Large Cap sector of the investable United States equity market. These indexes are capitalization-weighted and include only common stocks belonging to corporations domiciled in the United States and its territories and that are traded on the NYSE, NASDAQ or the AMEX. Stocks are weighted by their ''available'' market capitalization, which is calculated by multiplying the primary market price by the ''available'' shares; that is, total shares outstanding less corporate cross-owned shares, ESOP and LESOP-owned[6] shares comprising 10% or more of shares outstanding, unlisted share classes and shares held by an individual, a group of individuals acting together, or a corporation not in the index that owns 10% or more of the shares outstanding. Below is a brief description of each index:

Russell Top 200® Index.	Measures the performance of the 200 largest companies in the Russell 1000 Index, which represents approximately 74% of the total market capitalization of the Russell 1000 Index.
Russell Top 200® Growth Index.	Measures the performance of those Russell Top 200 companies with higher price-to-book ratios and higher forecasted growth values. The stocks are also members of the Russell 1000 Growth index.
Russell Top 200® Value Index.	Measures the performance of those Russell Top 200 companies with lower price-to-book ratios and lower forecasted growth values. The stocks are also members of the Russell 1000 Value index.

All companies listed on the NYSE, AMEX or NASDAQ are considered for inclusion in the universe of stocks that comprise the Russell 200 Indexes with the following exceptions: (1) Stocks trading less than $1.00 per share on May 31; (2) Non-U.S. incorporated companies; and (3) preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants and rights, trust receipts, royalty trusts, limited liability companies, bulletin board, pink sheet stocks, closed-end investment companies, limited partnerships, and foreign stocks.

The Russell Top 200 Growth Index and the Russell Top 200 Value Index are both subsets of the Russell Top 200 Index, which itself is a subset of the Russell 1000 and Russell 3000 Indexes. These Growth and Value versions of the Russell Top 200 Index may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value indexes equals the total capitalization of the Russell Top 200 Index. The CBOE represents that as of September 30, 2003, the Russell Top 200 Growth Index and the Russell Top 200 Value Index have 129 and 140 components, respectively.

According to the CBOE, on September 30, 2003, the stocks comprising the Russell Top 200 Index, Russell Top 200 Growth Index, and Russell Top 200 Value Index had an average market capitalization of $35.7 billion ranging from a high of $298 billion (General Electric Co.) to a low of $4.9 billion (FOX Entertainment Group, Inc.).[7] The number of available shares outstanding ranged from a high of 9.99 billion (General Electric Co.) to a low of 66.7 million (M & T Bank Corp.), and averaged 1.04 billion shares. The six-month average daily trading volume for Russell Top 200 Index components was

[3] *See* Letter from James M. Flynn, Attorney, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 21, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE expands its Statement on Burden on Competition in response to Item 4 of the Form 19b–4.

[4] *See* Letter from James M. Flynn, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Special Counsel, Division, dated January 6, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE expands its Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others in response to Item 5 of the Form 19b–4.

[5] *See* Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–92–02) and 48591 (October 2, 2003), 68 FR 58728 (SR–CBOE–2003–17).

[6] ESOP and LESOP-owned shares represent, generally, those shares of a corporation that are owned through employee stock ownership plans.

[7] *See* Exhibit B to the Form 19b–4.

5.68 million shares per day, ranging from a high of 59.96 million shares per day (Intel Corp.) to a low of 314,000 shares per day (M & T Bank Corp.). The CBOE represents that as of September 30, 2003, all of the Russell Top 200 Index components satisfied CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3.

The Russell Top 200 Index has a total capitalization of $7.2 trillion and the total capitalization of the Russell Top 200 Growth and Russell Top 200 Value Indexes is $3.9 trillion and $3.3 trillion, respectively. All of the components of the Russell Top 200 Index, the Russell Top 200 Growth Index, and the Russell Top 200 Value Index are options-eligible.

Calculation

The values of each Index are currently being calculated by Reuters on behalf of the Frank Russell Company and will be disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

The CBOE notes that the methodology used to calculate the value of each of the Russell 200 Indexes is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes. The level of each index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each index by its respective index divisor. The divisor is adjusted periodically to maintain consistent measurement of each index. The following is a table of base dates and the respective index levels as of September 30, 2003:

Index	Base date/Base index value	9/30/03 index value
Russell Top 200® Index	3/16/00 / 400.00	249.51
Russell Top 200® Growth Index	3/16/00 / 400.00	191.94
Russell Top 200® Value Index	3/16/00 / 400.00	324.72

Index Option Trading

According to the CBOE, options on these indexes shall be A.M.-settled. In addition to regular index options, the Exchange may provide for the listing of long-term index option series (''LEAPS®'') in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2.5-point increments for strikes below $200 and 5 point increments for strikes at or above $200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on all of the indexes will be from 8:30 a.m. to 3:15 p.m. Chicago time. The proposed contract specifications for the Russell 200 Index Options is set forth in Exhibit C to the Form 19b–4.

Maintenance

The CBOE represents that the Russell 200 Indexes will be monitored and maintained by the Frank Russell Company. The Frank Russell Company will be responsible for making all necessary adjustments to the indexes to reflect component deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances and changes in the market value of an index would require the use of an index divisor to effect adjustments.

The Exchange represents that the Russell 200 Indexes are re-constituted annually on June 30 and such reconstitution is based on prices and available shares outstanding as of the preceding May 31. New index components are added only as part of the annual re-constitution and, after which, should a stock be removed from an index for any reason, it cannot be replaced until the next re-constitution.

Although CBOE is not involved in the maintenance of any of the Russell 200 Indexes, the Exchange represents that it will monitor each Russell 200 Index on an annual basis, at which point the Exchange will notify the Commission if: (1) The number of securities in each index drops by ⅓ or more; (2) 10% or more of the weight of each index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of each Index is represented by component securities that are eligible for options trading pursuant to CBOE Rule 5.3; (4) 10% or more of the weight of each index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of each index or the largest five components in the aggregate account for more than 50% of the weight of each index.

Surveillance

The Exchange represents that CBOE's surveillance procedures are adequate to monitor the trading in options and LEAPS on the Russell 200 Indexes. Further, the Exchange shall have complete access to the information regarding the trading activity of the underlying securities.

Exercise and Settlement

The proposed options on each index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of each index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of each index at option expiration will be calculated by Reuters on behalf of the Frank Russell Company based on the opening prices of the component securities on the last business day prior to expiration. If a component security fails to open for trading, the exercise settlement value will be determined in accordance with CBOE Rules 24.7(e) and 24.9(a)(4). When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of index options at expiration will be determined at the opening of regular trading on Thursday.

Position Limits

The Exchange proposes to establish position limits for options on the Russell 200 Indexes at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are identical to the

limits applicable to options on the Russell 2000 Index as specified under Rule 24.4(a).

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will govern the trading of options on the aforementioned Russell 200 Indexes on the Exchange. Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of the Russell 200 Index options. CBOE also has been informed that OPRA has the capacity to support such new series.[8]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular in that it will permit trading in options on a broad range of indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE notes that it is proposing to trade options on the Russell 200 Indexes pursuant to a license granted to the CBOE by Frank Russell Company (''Russell'') on December 30, 2002 (the ''Russell License''). By its terms, the Russell License is exclusive in respect of cash-settled, U.S. dollar-denominated index options for the duration of its term (which extends until December 31, 2004, unless renewed), unless the CBOE fails to achieve specified levels of trading activity in which event Russell is able to cause the license to become nonexclusive.

The CBOE represents that it does not believe its proposal to trade options on the Russell 200 Indexes will impose any burden on competition, notwithstanding the exclusivity provisions of the Russell License. To the contrary, the CBOE believes that its proposal to trade options on the Russell 200 Indexes should be viewed as enhancing competition in the market for broad-based index options by providing for the trading on the CBOE of new classes of options that will compete with other broad-based index options and other indexed derivatives traded on the CBOE and in other markets.

The CBOE believes that Russell, like many other developers of broad-based securities indexes, has chosen to license its indexes for option trading on an exclusive basis because it believes its ability to realize the value of the indexes it owns is enhanced by licensing these properties on an exclusive, rather than on a non-exclusive, basis. Accordingly, the CBOE believes that such exclusivity gives Russell an incentive to develop and license additional indexes for derivatives trading, expanding the range of competing indexed derivative products available to investors. Reflecting this, the CBOE notes that the active competition that currently exists among indexed derivative products (including index options, index futures, options and futures on exchange-traded funds, etc.) and among the markets that trade these products (including securities exchanges, futures exchanges, the over-the-counter market, etc.) will be made even more vigorous by the introduction of trading on the CBOE in options on the Russell 200 indexes as proposed herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Following submission of this proposed rule change to the Commission, the International Securities Exchange (''ISE'') submitted a comment letter to the Commission regarding the proposed rule change on November 13, 2003. The CBOE responded to that comment letter through the submission of Amendment No. 1 to this proposed rule change, which amended Item 4 of the Form 19b–4, and a letter to the Commission, dated December 12, 2003. Each of these letters also cited and included previous CBOE submissions to the Commission with respect to the subject of ISE's comments.[11]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–51 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1761 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Letter from Joe Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated October 21, 2003.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that CBOE's Amendments and submissions are included in the public file and are available for review at the Commission and the CBOE.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49113; File No. SR–FICC–2003–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Add Adjustable-Rate Mortgage Pass-Through Securities to the GCF Repo Service Repurchase Service

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 11, 2003, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to add adjustable-rate mortgage pass-through securities (''ARMS'') to the GCF Repo service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Government Securities Division (''GSD'') of FICC currently accepts Fannie Mae (''FNMA''), Freddie Mac (''FHLMC''), and Ginnie Mae (''GNMA'') fixed-rate mortgage pass-through securities (''FRMs'') as repurchase agreement collateral in its GCF Repo service.[3] The GSD is proposing to add ARMS[4] to the GCF Repo service and to amend the GSD Rules to include the appropriate schedules of margin factors, offset classes, and disallowances as they pertain to ARMS.[5]

The GSD believes that ARMS make a logical addition to the categories of securities currently processed in the GCF Repo service for several reasons. ARMS are generally less risky to FICC and investors than FRMs due to their rate reset feature and faster prepayment rates. Both of these factors contribute to shorter effective duration and price fluctuations, resulting in lower margin factors as compared to FRMs. In addition, the correlation factors between ARMS and Treasuries are generally higher than those between FRMs and Treasuries because adjustable rates reflect more of the current rate conditions than fixed rates. Thus, the disallowance factors of ARMS versus Treasuries are smaller than those of FRMs versus Treasuries.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because it will promote the prompt and accurate clearance and settlement of securities transactions by enabling the GSD to provide the benefits of its netting, risk management, and settlement services to an expanded pool of securities for its GCF Repo service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2003–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's website at *http://www.ficc.com.*

All submissions should refer to File No. SR–FICC–2003–08 and should be submitted by February 18, 2004.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] The GSD's GCF Repo service enables dealer members to freely and actively trade GCF Repos throughout the day without requiring intraday, trade-for-trade settlement on a delivery-versus-payment basis.

[4] ARMS are mortgage loans in which the contract rates are reset periodically at a predetermined spread (or margin) over a specified reference index (such as the one-year Constance Maturity Treasury or 6 month LIBOR).

[5] The GSD is also proposing to make technical corrections to the relevant schedules to remove references to ''GSCC'' or to replace them with references to the Government Securities Division as appropriate.

[6] 15 U.S.C. 78q–1.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1758 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49114; File No. SR–NASD–2003–201]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities

January 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Schedule A of the NASD By-Laws to adjust the Trading Activity Fee (''TAF'') rate for covered equity securities; to reduce the maximum per trade charge on covered equity securities; and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine (''TRACE'') rules, are defined as ''TRACE-eligible securities'' and municipal securities subject to the Municipal Securities Rulemaking Board (''MSRB'') reporting requirements. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

Schedule A to NASD By-Laws

* * * * *

Section 1— Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(A) All exchange registered securities wherever executed ([other than bonds, debentures, and other evidence of indebtedness]*except debt securities that are not TRACE-eligible securities*);

(B) All other equity securities traded otherwise than on an exchange; [and]

(C) All security futures wherever executed[.]*;*

(D) All TRACE-eligible securities wherever executed; and

(E) All municipal securities subject to MSRB reporting requirements.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member[.]*; and*

Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR–NASD–2002–148.

(L) Proprietary transactions in TRACE-eligible securities by a firm that is a member of both NASD and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

(A) through (C) No Change.

(D) Each member shall pay to NASD a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.

(4) Reporting of Transactions. Members shall report to NASD the aggregate share*, bond*, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

(c) through (d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 24, 2002, NASD filed with the SEC proposed changes to the Gross Income Assessment (''GIA''), Personnel Assessment (''PA''),[4] and Regulatory Fee.[5] Those fees are used to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policymaking, rulemaking, and enforcement activities. The changes: (1) Eliminated the Regulatory Fee; (2) instituted a new transaction-based TAF applied across all markets, similar to the SEC's Section 31 Fee; (3) increased the rates assessed to member firms under the PA; and (4) implemented a simplified three-tiered

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that NASD filed the proposed rule change with an inconsistency in the numbering of the proposed rule language. *See* page 3 of 18, as compared with page 11 of 18. The Commission adjusted the text in this notice to correct this technical error. Also, the Commission notes that NASD either failed to remove the statement ''Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR–NASD–2002–148'' or neglected to change its placement in the proposed rule so as not to separate item (K) from item (L). *See* pages 3 of 18, and 12 of 18. The Commission expects NASD will file an amendment at a later date to correct this deficiency, and will carefully review future filings to avoid such errors.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [$0.0001]*$0.000075* per share for each sale of a covered equity security, with a maximum charge of [$10]*$3.75* per trade; $0.002 per contract for each sale of an option; [and] $0.04 per contract for each round turn transaction of a security future*; and $.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of $0.75 per trade.* In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ([$0.0001]*$0.000075* for covered equity securities, $0.002 for covered option contracts, or $0.04 for a security future) on a per share, per contract, or round turn transaction basis, then no fee will be assessed.

[4] Securities Exchange Act Release No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR–NASD–2002–98) (immediately effective TAF pilot program). NASD subsequently filed SR–NASD–2002–148 to give the proposal in SR–NASD–2002–98 a full notice and comment period and to adopt a permanent TAF program. *See* Securities Exchange Act Release No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002).

[5] Securities Exchange Act Release No. 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002) (SR–NASD–2002–99).

flat rate for the GIA whereby deductions and exclusions would be eliminated.

The new member regulatory structure, as approved by the SEC,[6] is revenue neutral to NASD and designed to better align NASD's regulatory fees with its functions, efforts, and costs. To ensure a member regulatory structure that is revenue neutral to NASD, NASD committed to analyze rates, volumes, and regulatory responsibilities periodically to sustain adequate funding levels for its member regulatory programs.[7] Further, as part of a three-year phase-in plan included in the originally proposed pricing structure, NASD stated its intent to reduce the revenue from the collection of the TAF by approximately 50% over the three-year period, offset by an increase in the Personnel Assessment. Finally, in response to comments from a number of members and other self-regulatory organizations about the scope of the TAF, NASD committed to analyzing whether debt transactions should be included.

Proposed Changes

Consistent with its commitment to analyze revenues and expenses and to reduce the share of the member regulatory program funded by TAF in 2004, NASD is proposing a reduction of the TAF rate on covered equity securities from the current rate of $0.10 per 1,000 shares to $0.075 per 1,000 shares.[8] In addition, in response to concerns expressed by a number of market participants,[9] NASD is proposing that the maximum charge per trade under the TAF be reduced from the current cap of $10.00 per trade (based on 100,000 shares) to $3.75 per trade (based on 50,000 shares).

Further, to fulfill its commitment to the SEC, made in connection with the original TAF rule filing, NASD is proposing to assess the TAF on TRACE-eligible securities and municipal securities. NASD has reviewed reported volumes for TRACE-eligible securities and municipal securities in conjunction with NASD's current regulatory costs associated with the oversight of these securities. Based upon this review, NASD has determined that it is appropriate to assess TRACE-eligible securities and municipal securities at a rate of $0.00075 per bond, with a maximum assessment of $0.75 per trade (based on 1,000 bonds). NASD believes that this rate is reasonable and allows for the equitable allocation of the TAF on member firms, reflecting NASD's regulatory efforts in the fixed income market.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. In this rule filing, NASD is reducing the TAF rate and the maximum TAF assessment per transaction on covered equity securities. In addition, NASD is assessing the TAF on TRACE-eligible securities and municipal securities subject to MSRB reporting requirements. These changes are consistent with NASD's statutory obligation under Section 15A(b)(5) of the Act[11] to ensure that its fees are reasonable and equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD 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.

If the Commission approves the filing, NASD proposes that the TAF rate reduction be implemented on the first day of the month following 30 days after approval of the proposed rule change. The assessment of fees on TRACE-eligible securities and municipal securities will be implemented on the first day of the month following six months after Commission approval. NASD is proposing an implementation date that is six months after SEC approval to allow member firms time to make programming changes to reflect the addition of a new category of covered securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–201. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–201 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[6] Securities Exchange Act Release Nos. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148) (approval order) and 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (SR–NASD+2002–99) (approval order).

[7] Specifically, NASD stated in the text of the TAF rule that it will ''periodically review these revenues in conjunction with these costs to determine the applicable rate'' NASD By-Laws, Schedule A, Section 1(a).

[8] NASD By-Laws, Schedule A, Section 1(a).

[9] *See, e.g.*, Letter to Robert R. Glauber and Mary L. Schapiro, NASD, from John P. Hughes and John C. Giesea, Security Traders Association, dated Oct. 21, 2003.

[10] 15 U.S.C. 78o–(b)(5).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1760 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49112; File No. SR–NYSE–2003–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of Certain 7¾% PEPS℠ Units Under Section 703.19

January 21, 2004.

I. Introduction

On November 26, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] the proposed rule change to list and trade 7¾% Premium Equity Participating Security Units (PEPS℠ Units), Series B (''Units''). The proposed rule change was published for comment in the **Federal Register** on December 19, 2003.[3]

II. Description of the Proposed Rule Change

The NYSE proposes to list and trade the Units pursuant to Section 703.19 of the Listed Company Manual (''Manual'').[4] Each of the Units consists of (1) a purchase contract (''Purchase Contract'') issued by PPL Corporation (''PPL'') and (2) a 2.5% undivided beneficial ownership interest in a $1,000 principal amount note (''Note'') due May 2006 issued by PPL Capital Funding, Inc. (''PPL Capital'') and guaranteed by PPL.[5]

The Units are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration Statement.[6] Specifically, PPL offers to exchange the Units and a cash payment of $0.375 for each validly tendered and accepted 7¾% Premium Equity Participating Security Unit (collectively referred to as the ''Old Units''), subject to, among other things, the condition that the Old Units remain listed on the Exchange.

Each Purchase Contract obligates the holder of a Unit to purchase from PPL, no later than May 18, 2004 (the ''Contract Settlement Date''), for a price of $25, the following number of shares of PPL common stock, $0.01 par value: (a) if the average of the closing prices of PPL's common stock over the 20-trading day period ending on the third trading day prior to the Contract Settlement Date multiplied by 1.017 is equal to or greater than $65.03, 0.3910 shares; (b) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than $65.03 but greater than $53.30, a number of shares, between 0.3910 and 0.4770 shares, having a value, based on the 20-trading day average of the closing prices, equal to $25; and (c) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than or equal to $53.30, 0.4770 shares. PPL will also pay Unit holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 0.46% per year of the stated amount of $25 per Unit, or $0.1150 per year.

From the date of issuance until the Contract Settlement Date, the Notes will constitute subordinated obligations of PPL Capital and will be guaranteed on a subordinated basis by PPL. On or after Contract Settlement Date, the Notes will constitute senior obligations of PPL Capital and will be guaranteed on a senior basis by PPL. Prior to the Contract Settlement Date, the ownership interest in the Notes will be pledged to secure the Unit holders' obligation to purchase PPL's common stock under the purchase contract. PPL has appointed a remarketing agent to remarket, or sell on behalf of Unit holders, the Notes to third party investors on a date (the ''Remarketing Date'') just prior to the Contract Settlement Date. Unit holders may choose to opt out of the remarketing of the Notes to third party investors to satisfy their payment obligations on the Contract Settlement Date. A Unit holder who opts out of the remarketing of the Notes would be required to settle each Purchase Contract for $25.00 in cash.

PPL Capital will also pay Unit holders interest at a rate of 7.29% per year on the principal amount of the Note. If there is a successful remarketing of the Notes, the interest rate will be reset and may be greater or less than 7.29% per year. PPL unconditionally guarantees the payment of principal and interest on the Notes of PPL Capital.

The Units represent both an equity and fixed income investment in PPL. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a Unit holder to purchase a variable number of shares of PPL common stock. The fixed income investment is in the form of a trust preferred security that represents an undivided beneficial interest in the subordinated Notes of PPL Capital which are guaranteed on a subordinated basis by PPL.

The Units will conform to the issuer listing criteria under Section 703.19 of the Manual and be subject to the relevant continuing listing criteria under Section 801 and 802 of the Manual.[7] The Exchange will impose the issuer listing requirements of Section 703.19(1) of the Manual on PPL.[8] The Exchange represents that PPL is an NYSE-listed company in good standing. The Units will also meet the listing standards found in Section 703.19(2) of the Manual, except that the Units will not have the minimum life of one year required for listings.[9]

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48918 (December 12, 2003), 68 FR 70851.

[4] Under Section 703.19 of the Manual, the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading. *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056–01 (July 24, 1990).

[5] *See* Registration No. 333–108450. The Registration Statement became effective on January 8, 2004.

[6] The Exchange represents that the Registration Statement provides a detailed discussion and comparison of the Old Units and the Units so that holders can evaluate whether it is in their best interests to participate in the exchange offer.

[7] Section 801.00 of the Manual provides, in relevant part, that when an issuer that has fallen below any of the continued listing criteria has more than one class of securities listed, the Exchange will give consideration to delisting all such classes. Section 802.01D of the Manual states, in relevant part, that delisting of specialized securities will be considered when the number of publicly-held shares is less than 100,000; the number of holders is less than 100; and aggregate market value of shares outstanding is less than $1 million. The Exchange also notes that it may, at any time, suspend a security if it believes that continued dealings in the security on the Exchange are not advisable.

[8] The issuer listing standards require: (1) If the issuer is a NYSE-listed company, the issuer must be a company in good standing; (2) if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; and (3) if not listed, the issuer must meet NYSE original listing standards as set forth in Sections 102.01–102.03 and 103.01–05 of the Manual.

[9] The equity listing standards require: (1) At least 1 million securities outstanding; (2) at least 400 holders; (3) minimum life of one year; and (4) at least $4 million market value. The Units will not have a minimum life of one year because the Contract Settlement Date is May 18, 2004. The Exchange notes that it does not believe that the Units will raise any significant new regulatory issues. Because the Units will meet or exceed the other requirements under Section 703.19 of the Manual, the Exchange believes that the Units will

The Exchange's existing equity trading rules apply to trading of the Units. The Exchange will also have in place certain other requirements to provide additional investor protection. First, pursuant to Exchange Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.[10] Second, the Units will be subject to the equity margin rules of the Exchange.[11] Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Exchange will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[12] Accordingly, the Commission finds that the listing and trading of the Units is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

As described more fully above, the Exchange proposes to list and trade the Units, which represent both an equity and fixed income investment in PPL. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a Unit holder to purchase a variable number of shares of PPL common stock at a specified price, both to be determined at the time of termination. The fixed income investment is in the form of a trust preferred security that represents an undivided beneficial interest in the subordinated Notes of PPL Capital which are guaranteed on a subordinated basis by PPL. The Units are being offered pursuant to an exchange offer which will reduce the interest paid on the Notes by Unit holders as compared to the Old Units.[14] The Exchange represents that the value of the Units is in part derived from the underlying PPL common stock. Unit holders are guaranteed at least the principal amount the payment of principal and interest on the Notes of PPL Capital. PPL will also pay Unit holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 0.46% per year of the stated amount of $25 per Unit, or $0.1150 per year.

The Commission notes that the Exchange's rules and procedures address the special concerns attendant to the trading of certain types of hybrid securities. In particular, by imposing the listing standards for certain types of hybrid securities, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Units. The Commission notes that the Exchange will distribute a circular to its members regarding member firm compliance responsibilities when handling transactions in the Units and highlighting the special risks and characteristics of the Units. Moreover, the Commission notes that the Exchange will distribute a prospectus to the holders of the Old Units calling attention to the specific risks associated with the purchase of the Units.

The Exchange's ''Other Securities'' listing standards in Section 703.19 of the Manual provide that issuers satisfying earnings and net tangible assets requirements may issue securities such as the Units provided that the issue is suited for auction market trading. The Commission notes that the Exchange has represented the following in accordance with the listing standards of Section 703.19 of the Manual: (1) That PPL is an NYSE-listed company in good standing; (2) there will be at least 1 million securities outstanding; (3) at least 400 holders; and (4) at least $4 million from which the value of the Unit is in part derived will remain outstanding and listed on the Exchange following maturity of the Units. The Commission notes that the Units will meet all of the relevant listing standards found in Section 703.19 of the Manual except that the Units will not have the minimum life of one year.[15] Because the Units are being offered in connection with an exchange offer, the Commission believes that the Units will have sufficient liquidity and depth of market, even if listed for a period of shorter than one year. The Exchange will also provide each of the holders of the Old Units with a registration statement outlining the specific risks associated with the purchase of the Units. Consequently, the Commission does not believe that the Units will raise any significant regulatory issues.

Because the issuer of the Unit is PPL (the Purchase Contract issued by PPL and the Note issued by PPL Capital and guaranteed by PPL), the Commission does not object to the Exchange's reliance on PPL to meet the issuer listing requirements of Section 703.19 of the Manual. The Units will conform to the listing guidelines under 703.19 of the Manual, except for the life of one year requirement, and the continued listing guidelines under Sections 801 and 802 of the Manual. The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Units or raise manipulative concerns because the Exchange's existing equity trading rules and equity margin rules will apply to trading of the Units. As discussed more fully above, the Exchange will also have in place certain other requirements to provide additional investor protection. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. The Commission notes that the Exchange will rely on its existing surveillance procedures governing equity, which the Exchange represents

have sufficient liquidity and depth of market, even if listed for a period shorter than one year. The Exchange also notes that the underlying PPL common stock from which the value of the Unit is in part derived will remain outstanding and listed on the Exchange following maturity of the Units.

[10] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[11] *See* NYSE Rule 431.

[12] *Id.*

[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* supra note 5.

[15] *See* supra notes 8 and 9.

have been deemed adequate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–2003–40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1757 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49103; File No. SR–ODD–2004–01]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Supplement To Amend the Options Disclosure Document Description Regarding Options Exercise Assignments and How To Exercise Options

January 20, 2004.

On January 7, 2004, the Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Exchange Act''),[1] five definitive copies of a supplement to its options disclosure document (''ODD'') that amends the ODD's description of assignment methods for assigning options exercises and the description of how to exercise options (''Supplement'').[2] The proposed Supplement supercedes and replaces the November 1995 Supplement to the ODD, and amends the ''Assignment'' and ''How to Exercise'' sections in Chapter VIII of the ODD.

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, OCC amended its rules to change the methodology for assigning exercises to a clearing member's customers' account for S&P 100 (OEX) index options from random to pro rata.[3] The proposed Supplement accommodates this change by amending the ODD's description of assigning options exercises.[4]

Specifically, the proposed Supplement provides a more general description of options assignment methodologies that refers investors to OCC for more specific assignment information.[5] In addition, the Supplement is being modified to provide a more general discussion of assignment exercise procedures of member firms to their customers by providing certain non-exclusive examples.[6] The new revisions will state that, in cases where less than all the open interest is exercised, both OCC assignment procedures and broker assignment procedures may affect the likelihood that a customer's position will be assigned and the potential size of such assignment.

Finally, the proposed Supplement also amends the description of how to exercise options. Specifically, the proposed Supplement amends the ODD by stating that investors should be aware of their brokerage firm's policies regarding such firm's cut-off time for accepting exercise instructions.

The Commission has reviewed the proposed Supplement and finds that it complies with Rule 9b–1 under the Exchange Act.[7] The proposed Supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.

Rule 9b–1(b)(2)(i) under the Exchange Act[8] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.[9] In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed Supplement, and finds it consistent with the protection of investors and in the public interest to allow the distribution of this document as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Exchange Act,[10] that the proposed Supplement (SR–ODD–2004–01), which amends the ODD's description of assignment methods, the risks of such assignments, and the description of how to exercise options, is approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1756 Filed 1–27–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.9b–1.

[2] *See* letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated January 6, 2004 (''OCC letter''). *See note* 4, *infra.*

[3] *See* Securities Exchange Act Release No. 48909 (December 11, 2003), 68 FR 74689 (December 24, 2003) (File No. SR-OCC–2003–05). According to OCC, to date the only other options classes where pro rata exercise is permitted under OCC rules is for foreign currency flex options.

[4] *See* OCC Letter, *supra* note 2.

[5] The Commission notes that changes to OCC's rules to accommodate new options assignment methods would still have to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). Further, OCC must continue to ensure that the ODD is in compliance with the requirements of Exchange Act Rule 9b–1(b)(2)(i), 17 CFR 240.9b–1(b)(2)(i), including when future changes to options exercise procedures are made.

[6] The Commission notes that any changes to the rules of the options exchanges concerning member firm assignment procedures would need to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). *See also* note 5, *supra.*

[7] 17 CFR 240.9b–1.

[8] 17 CFR 240.9b–1(b)(2)(i).

[9] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[10] 17 CFR 240.9b–1.

[11] 17 CFR 200.30–3(a)(39).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3563]

Territory of American Samoa

As a result of the President's major disaster declaration for Public Assistance on January 13, 2004, and subsequent amendment effective January 20, 2004 adding Individual Assistance, I find that The Island of Tutuila and The Manu'a Islands located within the Territory of American Samoa constitute a disaster area due to damages caused by high winds, high surf and heavy rainfall associated with Tropical Cyclone Heta that occurred on January 2, 2004, through January 6, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 22, 2004, and for economic injury until the close of business on October 20, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	6.123
Businesses and non-profit organizations without credit available elsewhere	3.061
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere:	3.061

The number assigned to this disaster for physical damage is 356308 and for economic injury the number is 9Z2200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–1736 Filed 1–27–04; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Benin has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Benin qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective, January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist U.S. Customs and Border Protection in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Benin as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Benin has taken, I have determined that Benin has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Benin'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 04–1746 Filed 1–27–04; 8:45 am]

BILLING CODE 3190–W3–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Israel Free Trade Area Implementation Act; Designation of Qualifying Industrial Zones

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under the United States-Israel Free Trade Area Implementation Act (IFTA Act), articles of qualifying industrial zones (QIZs) encompassing portions of Israel and Jordan or Israel and Egypt are eligible to receive duty-free treatment. Effective upon publication of this notice, the United States Trade Representative, pursuant to authority delegated by the President, is designating the Resources Company for Development and Investment Zone (RCDI), the Al Hallabat Industrial Park, and the expanded Al Tajamouat Industrial Park as qualifying industrial zones under the IFTA Act.

FOR FURTHER INFORMATION CONTACT: Edmund Saums, Director for Middle East Affairs, (202) 395–4987, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 9 of the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA Act), as amended (19 U.S.C. 2112 note), Presidential Proclamation 6955 of November 13, 1996 (61 FR 58761) proclaimed certain tariff treatment for articles of the West Bank, the Gaza Strip, and qualifying industrial zones. In particular, the Presidential Proclamation modified general notes 3 and 8 of the Harmonized Tariff Schedule of the United States: (a) To provide duty-free treatment to qualifying articles that are the product of the West Bank, the Gaza Strip or a qualifying industrial zone and are entered in accordance with the provisions of section 9 of the IFTA Act; (b) to provide that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the United States-Israel Free Trade Area Agreement (''the Agreement'') even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement; and (c) to provide that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement and that the direct costs of

processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

Section 9(e) of the IFTA Act defines a ''qualifying industrial zone'' as an area that ''(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been specified by the President as a qualifying industrial zone.''

Presidential Proclamation 6955 delegated to the United States Trade Representative the authority to designate qualifying industrial zones.

The United States Trade Representative has previously designated qualifying industrial zones under section 9 of the IFTA Act on March 13, 1998 (63 FR 12572), March 19, 1999 (64 FR 13623), October 15, 1999 (64 FR 56015), October 24, 2000 (65 FR 64472), December 12, 2000 (65 FR 77688), and June 15, 2001 (66 FR 32660).

The governments of Israel and Jordan agreed in protocols submitted in July 2003 to the designation of a zone to be developed by RCDI and the designation of the Al Hallabat Industrial Park, registered under the name of Jordan International Industries Company, as QIZs. Israel and Jordan also agreed in a protocol submitted in July 2003 to the expansion of the already-designated QIZ area of the Al Tajamouat Industrial Park. Israel and Jordan further agreed that merchandise may enter, without payment of duty or excise taxes, areas under their respective customs control in association with RCDI, Al Hallabat, and the expanded Al Tajamouat qualifying industrial zones. Accordingly, RCDI, Al Hallabat, and the expanded Al Tajamouat qualifying industrial zones meet the criteria under paragraphs 9(e)(1) and (2) of the IFTA Act. Therefore, pursuant to the authority delegated to me by Presidential Proclamation 6955, I hereby designate the Resources Company for Development and Investment Zone, the Al Hallabat Industrial Park, and the expanded Al Tajamouat Industrial Park, as established by the 2003 Amending Protocols to the Agreement Between the Government of the Hashemite Kingdom of Jordan and the Government of the State of Israel on Irbid Qualifying Industrial Zone, as qualifying industrial zones under section 9 of the IFTA Act, effective upon the date of publication of this notice, applicable to articles shipped from these qualifying industrial zones after such date.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 04–1745 Filed 1–27–04; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34284]

Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of intent to prepare an environmental impact statement; notice of initiation of the scoping process; notice of availability of draft scope of study for the environmental impact statement and request for comments.

SUMMARY: On February 27, 2003, Southwest Gulf Railroad Company (SGR) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate a new rail line in Medina County, Texas. The proposed project would involve the construction and operation of approximately seven miles of new rail line. Because the effects of the proposed project on the quality of the human environment are likely to be highly controversial, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. The purpose of this notice is to notify individuals and agencies interested in or affected by the proposed project of SEA's decision to prepare an EIS and to initiate the formal scoping process. This notice also announces the availability of a draft scope of study and requests comments on the draft scope of study.

DATES: Comments are due by February 26, 2004.

Submitting Environmental Comments: If you wish to submit written comments regarding the attached proposed draft scope of study, please send an original and two copies to the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, to the attention of Rini Ghosh. Please refer to STB Finance Docket No. 34284 in all correspondence addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Rini Ghosh, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, or 512–419–5941 (the project information line). Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. The Web site for the Surface Transportation Board is *http://www.stb.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: By petition filed on February 27, 2003, SGR sought an exemption from the Board under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate an approximately seven mile line of railroad in Medina County, TX. The proposed rail line would connect a proposed Vulcan Construction Materials, LP quarry and the Del Rio subdivision of the Union Pacific Railroad Company (UP) at milepost 250, near Dunlay, Texas. SGR would use the new rail line to transport limestone from the proposed quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. Although the primary purpose of the proposed construction is to provide rail service to the quarry site, SGR would hold itself out as a common carrier and provide service to other industries that might locate in the area in the future. In a decision served on May 19, 2003, the Board granted conditional approval to SGR's petition, subject to completion of the environmental review process.

Pursuant to the Board's responsibilities under the National Environmental Policy Act (NEPA), SEA has begun the environmental review of SGR's proposal by consulting with appropriate Federal, State, and local agencies, as well as SGR, and conducting technical surveys and analyses. SEA has also consulted with the Texas Historical Commission (THC) in accordance with the regulations implementing section 106 of the National Historic Preservation Act (NHPA) at 36 CFR part 800 and identified appropriate consulting parties to the section 106 process.

On October 10, 2003, SEA issued a Preliminary Cultural Resources Assessment report to the section 106 consulting parties for review and comment. The report set forth SEA's preliminary findings and recommendations regarding cultural resources in the proposed project area. THC, the consulting parties, and other individuals submitted comment letters in response to the report; many of the comments addressed environmental

concerns not related to cultural resources.

Due to substantial early public interest in the proposed project, SEA has also conducted extensive public outreach and informal scoping,[1] including holding an informational Open House in Hondo, Texas on June 12, 2003. Approximately 200 people attended the Open House and over 100 comment letters were received in response to the Open House.

Based on the nature and content of the numerous public and agency comments received, including the comments on the Preliminary Cultural Resources Assessment report,[2] SEA has determined that the effects of the proposed project on the quality of the human environment are likely to be highly controversial, and that thus, preparation of an EIS is appropriate.[3] At this point in the environmental review process, SEA intends to analyze the potential environmental impacts of the proposed route, the no-action or no-build alternative (*i.e.*, transporting the limestone by truck instead of rail), and three possible alternative routes. We welcome comments on these or additional alternatives.

Environmental Review Process: The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. SEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS. SEA has developed a draft scope of study for the EIS for public review and comment, which incorporates the issues and concerns raised in the comment letters SEA has received thus far. SEA is soliciting written comments on this draft scope of study. After the close of the comment period on the draft scope of study, SEA will review all comments received and then issue a final scope of study for the EIS.

Following the issuance of the final scope of study, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for at least 45 days. A public meeting will also be held during the comment period for the Draft EIS. The details of the public meeting, including the specific format, location, and date, will be available in the Draft EIS. SEA will then prepare a Final EIS (FEIS) that addresses the comments on the DEIS from the public and agencies. Then, in reaching its decision in this case, the Board will take into account the DEIS, the FEIS, and all environmental comments that are received.

Draft Scope of Study for the EIS: Proposed Action and Alternatives

The proposed project would involve the construction and operation of a single-track rail line to connect a proposed Vulcan Construction Materials, LP quarry and UP's Del Rio subdivision line. The proposed rail line would extend about seven miles from the quarry site to approximately milepost 250 of the UP line, at a point near Dunlay, Texas. SGR would use the new rail line to transport limestone from the proposed quarry to the UP rail line, for shipment to markets in the Houston area, as well as other markets in the Southeast, Gulf Coast, and Rio Grande Valley regions of Texas. Although the primary purpose of the proposed construction is to provide rail service to the quarry site, SGR would hold itself out as a common carrier and provide service to other industries that might locate in the area in the future.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) construction and operation of the proposed project along SGR's proposed alignment (including a rail loading facility, consisting of a loading loop or a series of parallel tracks, that would be constructed and operated on the quarry property and is not subject to the Board's jurisdiction), (2) three alternative routes that have been developed to date, as well as other alternatives that might be identified during the scoping process, and (3) the no-action or no-build alternative (this would involve transportation of the limestone by truck from the proposed quarry to the UP rail line, instead of by rail). We welcome comments on these or additional alternatives.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of the proposed new rail line and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of the new rail line on the human and natural environment. Impact areas addressed will include the effects of the proposal on transportation and traffic safety, public health and worker health and safety, water resources, biological resources, air quality, geology and soils (including any karst features), land use, environmental justice, noise, vibration, recreation and visual resources, cultural resources and socioeconomics. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category, as described below:

1. Transportation and Traffic Safety

The EIS will:

a. Describe the potential impacts of the proposed new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at grade crossings.

b. Describe the potential for train derailments or accidents from proposed rail operations.

c. Describe potential pipeline safety issues at rail/pipeline crossings, as appropriate.

d. Propose mitigative measures to minimize or eliminate potential project impacts to transportation and traffic safety, as appropriate.

2. Public Health and Worker Health and Safety

The EIS will:

a. Describe potential public health impacts from the proposed new rail line construction and operation.

b. Describe potential impacts to worker health and safety from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts to public health and worker health and safety, as appropriate.

3. Water Resources

The EIS will:

a. Describe the existing groundwater resources within the project area, such

[1] Agencies may conduct informal scoping prior to issuance of the Notice of Intent to prepare an EIS. *See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (1981), Question 13.

[2] All comments received are available on the Board's Web site at *http://www.stb.dot.gov,* by clicking on ''Environmental Issues,'' clicking on ''Environmental Correspondence,'' and then searching the materials under ''FD 34284.''

[3] *See* 40 CFR 1508.27(b)(4).

as aquifers and springs, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

b. Describe the existing surface water resources within the project area, including watersheds, streams, rivers, and creeks, and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

c. Describe existing wetlands in the project area and the potential impacts on these resources resulting from construction and operation of the proposed new rail line.

d. Describe the permitting requirements that are appropriate for the proposed new rail line construction and operation regarding wetlands, stream and river crossings (including floodplains), water quality, and erosion control.

e. Propose mitigative measures to minimize or eliminate potential project impacts to water resources, as appropriate.

4. Biological Resources

The EIS will:

a. Describe the existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and Federal and state threatened or endangered species and the potential impacts to these resources resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources, as appropriate.

5. Air Quality Impacts

The EIS will:

a. Describe the potential air quality impacts resulting from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to air quality, as appropriate.

6. Geology and Soils

The EIS will:

a. Describe the native soils and geology of the proposed project area.

b. Describe the existing karst features of the project area, if any, and the potential impacts to karst features from the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project impacts on soils and geology and to karst features, as appropriate.

7. Land Use

The EIS will:

a. Describe existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed new rail line construction and operation.

b. Describe the potential impacts associated with the proposed new rail line construction and operation to land uses identified within the project area.

c. Propose mitigative measures to minimize or eliminate potential project impacts to land use, as appropriate.

8. Environmental Justice

The EIS will:

a. Describe the demographics of the communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether new rail line construction or operation would have a disproportionately high adverse impact on any minority or low-income group.

c. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities of concern, as appropriate.

9. Noise

The EIS will:

a. Describe the existing noise environment of the project area and potential noise impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors, as appropriate.

10. Vibration

The EIS will:

a. Describe the potential vibration impacts from the proposed new rail line construction and operation.

b. Propose mitigative measures to minimize or eliminate potential project impacts from vibration, as appropriate.

11. Recreation and Visual Resources

The EIS will:

a. Describe existing recreation and visual resources in the proposed project area and potential impacts to recreation and visual resources from construction and operation of the proposed new rail line.

b. Propose mitigative measures to minimize or eliminate potential project impacts to recreation and visual resources, as appropriate.

12. Cultural Resources

The EIS will:

a. Describe the cultural resources environment in the area of the proposed project and potential impacts to cultural resources from the proposed new rail line construction and operation.

b. Describe the ongoing NHPA section 106 process for the proposed project, and propose mitigative measures to minimize or eliminate potential project impacts to cultural resources, as appropriate.

13. Socioeconomics

The EIS will:

a. Describe the demographic characteristics of the project area and the current sources of income.

b. Describe the potential environmental impacts to employment and the local economy as a result of the proposed new rail line construction and operation.

c. Propose mitigative measures to minimize or eliminate potential project adverse impacts to socioeconomic resources, as appropriate.

14. Cumulative and Indirect Impacts

The EIS will:

a. Address any identified potential cumulative impacts of the proposed new rail line construction and operation, as appropriate. Cumulative impacts are the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions (for example, Vulcan Construction Materials, LP's proposed new quarry).

b. Address any identified potential indirect impacts of the proposed new rail line construction and operation, as appropriate. Indirect impacts are impacts that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

Decided: January 22, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1794 Filed 1–27–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34392]

New Jersey Rail Carrier LLC—Acquisition and Operation Exemption—Former Columbia Terminals, Kearny, NJ

New Jersey Rail Carrier LLC (NJ Rail), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease, pursuant to an

agreement with Amcol Realty Co., Inc. (ARC), and to operate approximately 2,250 feet of railroad track formerly known as the Columbia Terminals, beginning at a switch from a line of Consolidated Rail Corporation located along Meadows Track 1 ZTS Zone 17, near Line Code 0204, milepost 4.2, and extending over various lengths of four tracks to their stub ends, in the Town of Kearny, Hudson County, NJ.

NJ Rail certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was due to be consummated on August 14, 2003, the effective date of the exemption (7 days after the exemption was filed). By decision served on August 13, 2003, however, the Board stayed the effective date of the exemption to obtain additional, more specific information on the operations that NJ Rail proposes to conduct. By decision served on January 20, 2004, the Board lifted the stay and allowed the exemption to take effect on the effective date of that decision. The Board is hereby giving notice of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34392, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 21, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1675 Filed 1–27–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Financial Subsidiaries and Operating Subsidiaries—12 CFR 5.''

DATES: You should submit written comments by March 29, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0215, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0215), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Financial Subsidiaries and Operating Subsidiaries—12 CFR 5.

OMB Number: 1557–0215.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The regulatory requirements regarding this information collection are located as follows:

12 CFR 5.24(d)(2)(ii)(G)—*Conversion:* An institution must identify all subsidiaries that will be retained following the conversion and provide information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to 12 CFR 5.34 or 5.39. The OCC will use the information to determine whether to grant the financial institution's request to convert to a national charter.

12 CFR 5.33(e)(3)(i) and (ii)—*Business combinations:* A national bank must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. A national bank proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to 12 CFR 5.34 or 5.39.

The OCC needs this information regarding the subsidiaries to be acquired to determine whether to approve the business combination. The OCC will use this information to confirm that the proposed activity is permissible for a national bank operating subsidiary and to ensure that a bank proposing to conduct activities through a financial subsidiary satisfies relevant statutory criteria.

12 CFR 5.34—*Operating subsidiaries:* A national bank must file a notice or application to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary. The application or notice provides the OCC with needed information regarding the activities and location(s) of the operating subsidiaries. The OCC will review the information to determine whether proposed activities are legally permissible, to ensure that the proposal is consistent with safe and sound banking practices and OCC policy, and that it does not endanger the safety and soundness of the parent national banks.

12 CFR 5.35(f)(1) and (2)—*Bank service companies:* Under 12 CFR 5.35(f)(1), a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC.

Under 12 CFR 5.35(f)(2), a national bank that is ''well capitalized'' and ''well managed'' may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate OCC district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in 12 CFR 5.34(e)(5)(v). The OCC will review after-the-fact notices to confirm the permissibility of

the national bank's investment in the bank service company.

12 CFR 5.36(e)—Other equity investments—Non-controlling investments: A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in 12 CFR 5.36(e)(2) by filing a written notice. The OCC will use the information provided in the notice to confirm that the national bank is well capitalized and well managed, and that the bank meets the requirements applicable to non-controlling investments.

12 CFR 5.39—*Financial subsidiaries:* A national must file a notice prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in 12 CFR 5.39(i)(1) and (2). The OCC will review this information to ensure that a proposed interest acquisition satisfies applicable statutory criteria.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 607.

Estimated Total Annual Responses: 607.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 607 burden hours.

Comments: Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–1752 Filed 1–27–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted in Atlanta, Ga. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held February 26, 27 and 28, 2004.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held in Atlanta, Ga. Thursday, February 26, Friday, February 27, from 1 pm EST to 5 pm EST and Saturday, February 28, 2004, from 8 am EST to 12:00 pm EST. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference space, notification of intent to participate in the Atlanta, Ga. meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include: Various IRS issues.

Dated: January 23, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1815 Filed 1–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 24, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 24, 2004 at 11 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mrs. Knispel.

The agenda will include: Various IRS issues.

Dated: January 23, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–1816 Filed 1–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting for Tuesday, February 24, 2004, at the Department of Veterans Affairs, Veterans Benefits Administration Conference Room 542, 1800 G Street, NW., Washington, DC from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of title 38, United States Code.

The meeting will begin with opening remarks by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will receive a progress report on the Licensing and Certification Approval System (LACAS) as part of The Education Expert System (TEES); a presentation on licensure and certification usage, and discuss any old business. The afternoon session will include discussion of any new business.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Giles Larrabee, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements from the public will be heard at 1 p.m. on February 24. Anyone wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187.

Dated: January 20, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–1764 Filed 1–27–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) give notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its eighth meeting on February 10–11, 2004 at the Holiday Inn Walt Disney World Resort, 1805 Hotel Plaza Blvd, Lake Buena Vista, FL 32830. On Tuesday, February 10, the meeting will begin with registration at 7:30 a.m. and adjourn at 5 p.m. On Wednesday, February 11, the meeting will begin with registration at 7:30 a.m. and adjourn at 2 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

On February 10 and 11, the Commission will complete its consideration of recommendations to be submitted to Congress and the Secretary. This is expected to be the last formal meeting of the Commission.

Members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: January 20, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–1763 Filed 1–27–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''The Revenue Program—Billing and Collections Records—VA'' (114VA17) as set forth in the **Federal Register** 67 FR 41573–41578 dated June 18, 2002. VA is re-numbering the system of records and also amending the System Location, the Categories of Records in the System, the Purpose(s), the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses, and the System Manager(s) and Address. VA is republishing the system notice in its entirety.

DATES: Comments on this new system of records must be received no later than February 27, 2004. If no public comment is received, the new system will become effective February 27, 2004.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed amended system of records to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* All relevant material received before February 27, 2004, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The purpose of this Billing and Collections system of records is to compile all relative information in order to (1) bill to or collect from third parties (insurance carriers) for medical care or services received by a veteran for a nonservice-connected condition; (2) bill to or collect from other Federal agencies for medical care or services received by an eligible beneficiary; (3) bill to or collect from a veteran required to make co-payments based on eligibility (first party) for medical care or services received by a veteran for a nonservice-connected condition; (4) identify and/or verify insurance coverage of a veteran or veteran's spouse prior to submitting claims for medical care or services; (5) submit appeals to third parties for non-reimbursement of claims for medical care or services provided to a veteran; (6) enroll health care providers, utilizing the Provider Healthcare Ongoing Electronic Data Interchange (EDI) Billing Enrollment software (PHOEBE), with

third party health plans and VA's health care clearinghouse in order to electronically file claims for medical care or services; and (7) report analytical and statistical data related to management practices, reimbursement practices of insurance carriers, and billing and collection data.

VA is renumbering the system of records to 114VA16 to reflect organizational changes. System Location is amended to include the maintenance of records at contractor facilities.

VA is amending the Categories of Individuals Covered by the System by deleting the phrase ''International Government responsible for'' in number seven (7). Pensioned members of allied forces (Allied Beneficiaries) who are provided health care services under Title 38, U.S.C. Chapter 1 are covered by the system.

VA is amending the Categories of Records in the System as described below:

• Number two (2) is amended to replace ''Insurance information specific to the veteran and/or spouse'' with ''Insurance company information specific to coverage of the veteran and/or spouse.''

• Number four (4) is amended to replace ''Charges claimed to an insurance company based on treatment/services provided to the patient'' with ''Charges claimed to a third party payer, including insurance companies, other Federal agencies, or foreign governments, based on treatment/services provided to the patient.''

• Number six (6) is amended to add the phrase ''and credentials including the provider's degree, licensure, certification, registration and occupation.''

The Purpose(s) has been amended to add ''For the purposes of health care billing and payment activities to and from third party payers, VA will disclose information in accordance with the legislatively-mandated transaction standard and code sets promulgated by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPAA).''

The Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses are amended as described below.

• Routine use ten (10) is amended to include disclosures of health care providers' credentials to a third party where the third party requires the Department to provide that information before it will pay for medical care provided by VA.

• Routine use eleven (11) is amended to replace ''in order for the contractor to perform the services of the contract or agreement'' with ''in order for the contractor or sub-contractor to perform the services of the contract or agreement.''

• A new routine use fifteen (15) has been added. Identifying information such as name, address, social security number and other information as is reasonably necessary to identify such individual may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and at other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

• A new routine use sixteen (16) has been added. Disclosure of individually-identifiable health information, including billing information for the payment of care, may be made by appropriate VA personnel to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually-identifiable health information, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

System Manager(s) and Address is amended to reflect organizational changes.

The Report of Intent to Publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: January 12, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

114VA16

SYSTEM NAME:

The Revenue Program—Billing and Collections Records-VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility. In most cases, back-up computer tape information is stored at off-site locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC; the VA Austin Automation Center (AAC), Austin, Texas; Veterans Integrated Service Network (VISN) Offices; VA Allocation Resource Center (ARC), Boston, Massachusetts and contractor facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases members of their immediate families.
2. Beneficiaries of other Federal agencies.
3. Individuals examined or treated under contract or resource sharing agreements.
4. Individuals examined or treated for research or donor purposes.
5. Individuals who have applied for Title 38 benefits but who do not meet the requirements under Title 38 to receive such benefits.
6. Individuals who were provided medical care under emergency conditions for humanitarian reasons.
7. Pensioned members of allied forces (Allied Beneficiaries) who are provided health care services under Title 38, United States Code, Chapter 1.
8. Health care professionals providing examination or treatment to any individuals within VA health care facilities.
9. Health care professionals providing examination or treatment to individuals under contract or resource sharing agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. The social security number and insurance policy number of the veteran and/or veteran's spouse. The record may include other identifying information (*e.g.*, name, date of birth, age, sex, marital status) and address information (*e.g.*, home and/or mailing address, home telephone number).
2. Insurance company information specific to coverage of the veteran and/or spouse to include annual deductibles and benefits.
3. Diagnostic codes (ICD9–CM, CPT–4, and any other coding system) pertaining to the individual's medical, surgical, psychiatric, dental and/or psychological examination or treatment.
4. Charges claimed to a third party payer, including insurance companies, other Federal agencies, or foreign governments, based on treatment/services provided to the patient.
5. Charges billed to those veterans who are required to meet co-payment obligations for treatment/services rendered by VA.
6. The name, social security number, universal personal identification number and credentials including provider's degree, licensure, certification, registration or occupation of health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 1710 and 1729.

PURPOSE(S):

The records and information are used for the billing of, and collections from, a third-party payer, including insurance companies, other Federal agencies, or foreign governments, for medical care or services received by a veteran for a nonservice-connected condition or from a first party veteran required to make co-payments. The records and information are also used for the billing of and collections from other Federal agencies for medical care or services received by an eligible beneficiary. The data may be used to identify and/or verify insurance coverage of a veteran or veteran's spouse prior to submitting claims for medical care or services. The data may be used to support appeals for non-reimbursement of claims for medical care or services provided to a veteran. The data may be used to enroll health care providers with health plans and VA'' s health care clearinghouse in order to electronically file third-party claims. For the purposes of health care billing and payment activities to and from third party payers, VA will disclose information in accordance with the legislatively-mandated transaction standard and code sets promulgated by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPAA). The records and information may be used for statistical analyses to produce various management, tracking and follow-up reports, to track and trend the reimbursement practices of insurance carriers, and to track billing and collection information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.*, individually-identifiable health information, and 38 U.S.C. 7332; *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. On its own initiative, VA may disclose information, except for the names and home address of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.
2. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia government in response to its request or at the initiation of VA, in connection with the letting of a contract, other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision. However, names and addresses of veterans and their dependents will be released only to Federal entities.
3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
4. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.
5. Disclosure may be made to the Department of Justice and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.
6. Any information in this system of records, including personal information obtained from other Federal agencies through computer-matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist VA in collection of Title 38 overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or

criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

7. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

8. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer-matching program to accomplish these purposes.

9. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to HHS for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA was authorized and was responsible for payment for medical services obtained at non-VA health care facilities.

10. The social security number, universal personal identification number, credentials, and other identifying information of a health care provider may be disclosed to a third party where the third party requires the Department provide that information before it will pay for medical care provided by VA.

11. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor and/or subcontractor to perform the services of the contract or agreement.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges, or any restriction of such privileges, by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

13. Patient identifying information may be disclosed from this system of records to any third party or Federal agency such as the Department of Defense, Office of Personnel Management, HHS and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

14. Relevant information, including the nature and amount of a financial obligation, may be disclosed in order to assist VA in the collection of unpaid financial obligations owed VA, to a debtor's employing agency or commanding officer, so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

15. Identifying information such as name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and at other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

16. Disclosure of individually-identifiable health information including billing information for the payment of care may be made by appropriate VA personnel, to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper or electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifier of the individuals on whom they are maintained, or by specific bill number assigned to the claim of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis. Strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Information in VistA may only be accessed by authorized VA personnel. Access to file information is controlled at two levels. The systems recognize authorized personnel by series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that

information in the file, which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the health care facility, or an OIG office location remote from the health care facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

4. Access to the VA Austin Automation Center (AAC) is generally restricted to AAC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AAC databases may be accessed.

5. Access to records maintained at the VA Allocation Resource Center (ARC) and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for policies and procedures is the Chief Business Officer, Chief Business Office (16), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. The local officials responsible for maintaining the system are the Director of the facility where the individual is or was associated.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. All inquiries must reasonably identify the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, insurance company information, policyholder and policy identification number as well as a return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they were treated.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members or guardian, and friends, employers or other third parties when otherwise unobtainable from the patient or family; health insurance carriers; private medical facilities and health care professionals; state and local agencies; other Federal agencies; VA regional offices; Veterans Benefits Administration automated record systems, including Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22); and various automated systems providing clinical and managerial support at VA health care facilities to include Health Care Provider Credentialing and Privileging Records-VA (77VA10Q) and Veterans Health Information Systems and Technology Architecture (VistA) (79VA19).

[FR Doc. 04–1762 Filed 1–27–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 18

Wednesday, January 28, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2304–03]

Direct Mail Requests for Special Immigrant Classification and/or Adjustment of Status by Officers or Employees of International Organizations and Their Family Members

Correction

In notice document 04–1513 beginning on page 3380 in the issue of Friday, January 23, 2004, make the following correction:

On page 3380, in the first column, under the heading ''**DATES**'', ''February 2, 2004'' should read ''February 23, 2004''.

[FR Doc. C4–1513 Filed 1–27–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 28, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 990

Operating Fund Program; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–N–02]

Operating Fund Program; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to establish a negotiated rulemaking advisory committee and notice of first meeting.

SUMMARY: The Department of Housing and Urban Development (HUD) is establishing a Negotiated Rulemaking Advisory Committee (Committee) under the Federal Advisory Committee Act. The purpose of the Committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's ''Public Housing Operating Cost Study'' (Harvard Cost Study). In accordance with the Negotiated Rulemaking Act of 1990, this document: Advises the public of the establishment of the Committee; provides the public with information regarding the Committee; solicits public comment on the proposed membership of the Committee; and explains how persons may be nominated for membership on the Committee.

DATES: *Comment Due Date:* February 27, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. The docket will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Kubacki, Director, Funding and Financial Management Division, Public and Indian Housing—Real Estate Assessment Center, Suite 800, Department of Housing and Urban Development, 1280 Maryland Ave, SW., Washington, DC 20024–2135; telephone (202) 708–4932 (this telephone numbers is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD currently uses a formula approach called the Operating Fund Formula to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the Operating Fund Formula can be found at 24 CFR part 990. Generally, the amount of subsidy received by a PHA is the difference between an ''allowable expense level'' and projected rental income, with the Operating Fund Formula regulations detailing how these projections will be made. ''Allowable expense level'' is defined in 24 CFR part 990 and does not necessarily reflect the actual cost of operating public housing properties. PHAs calculate their Operating Fund Formula eligibility annually and submit a request for funding as part of their budget process. The amount of subsidy can vary from one year to the next as a result of the annual appropriations process and accounts for approximately 57 percent of a PHA's total operating revenue, the balance coming from rents and other sources, *e.g.,* fees. For fiscal year 2003, HUD distributed over $3.34 billion in operating subsidies to PHAs.

On October 21, 1998, Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). Section 519 of QHWRA established an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing and required the amount of assistance made available to a PHA to be determined using a formula developed through negotiated rule-making procedures. Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and resulted in a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

During the negotiated rulemaking for the Operating Fund Formula, Congress in the Conference Report (H.Rept. 106–379, October 13, 1999) accompanying HUD's Fiscal Year (FY) 2000 Appropriation Act (Pub. L. 106–74, approved October 20, 1999) directed HUD to contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. A Final Report, the Harvard Cost Study, was issued by Harvard GSD on June 6, 2003.

HUD is publishing this notice to announce it intends to establish a negotiated rulemaking committee that will provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard Cost Study.

II. Regulatory Negotiation

The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative, and acceptable solutions to difficult problems. The Committee's role will be advisory and the Committee's goal will be to provide ''consensus'' recommendations to HUD. ''Consensus'' will be defined in the initial meeting of the Committee. The Committee will consist of representatives of the various interests that are potentially affected by the rulemaking. Members may include public housing agencies, tenant organizations, elected officials, community based organizations, national organizations representing the interests of these entities, other interested parties, and HUD. Members will serve at HUD's discretion.

III. Committee Membership

HUD has tentatively identified the following list of possible interests and parties. The final list of participants may not include all of these parties. HUD will decide on the final list of participants based upon comments on this notice, as well as its own efforts to identify other entities having an interest in the outcome of this rulemaking. The Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570) provides, at 5 U.S.C. 565(b), that the membership of a negotiated rulemaking committee should generally be limited to 25 members. In this instance, the Committee's proposed membership is greater than 25 members, since HUD has determined that a greater number of members may be required to adequately represent the interests affected by changes to the Public Housing Operating Fund Program.

Housing Agencies

1. Atlanta Housing Authority, Atlanta, GA

2. New York City Housing Authority, NYC, NY
3. Puerto Rico Housing Authority, San Juan, PR
4. Chicago Housing Authority, Chicago, IL
5. Dallas Housing Authority, Dallas, TX
6. Anne Arundel Housing Authority, Anne Arundel, MD
7. Indianapolis Housing Authority, Indianapolis, IN
8. Albany Housing Authority, Albany, NY
9. Jackson Housing Authority, Jackson, MS
10. Boise City/Ada County Housing Authority, Boise City, ID
11. Reno Housing Authority, Reno, NV
12. Alameda Housing Authority, Alameda, CA
13. Athens Housing Authority, Athens, GA
14. Housing Authority of East Baton Rouge, Baton Rouge, LA
15. Housing Authority of the City of Montgomery, Montgomery, AL

Tenant Organizations

1. Jack Cooper, Massachusetts Union of Public Housing Tenants, Needham, MA

Other Interests/Policy Groups

1. Ned Epstein, Housing Partners, Inc.
2. Howard Husock, Director of Kenney School Case Program
3. Greg Byrne, Project Director for Harvard Cost Study
4. Dan Anderson, Bank of America
5. David Land, Lindsey and Company
6. Council of Large Public Housing Agencies
7. National Association of Housing and Redevelopment Officials
8. Public Housing Authorities Directors Association
9. National Organization of African Americans in Housing

Federal Government

1. Assistant Secretary Michael Liu, U.S. Department of Housing and Urban Development
2. Deputy Assistant Secretary William Russell, U.S. Department of Housing and Urban Development

We invite you to give us comments and suggestions on this tentative list of Committee members. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Accordingly, the composition of the final list may be different from this tentative list. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the Committee may attend sessions and communicate informally with members of the Committee.

IV. Requests for Representation

If you are interested in serving as a member of the Committee or in nominating another person to serve as a member of the Committee, you must submit a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice. Your nomination for membership on the Committee must include:

(1) The name of your nominee and a description of the interests the nominee would represent;

(2) Evidence that your nominee is authorized to represent parties with the interests the nominee would represent;

(3) A written commitment that the nominee will actively participate in good faith in the development of the rule; and

(4) The reasons that the parties listed in this notice do not adequately represent your interests.

HUD will determine whether a proposed member should be included in the makeup of the Committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule and whether the interest of the proposed member could be represented adequately by other members.

V. Final Notice Regarding Committee Establishment

After reviewing any comments on this notice and any requests for representation, HUD will publish a notice in the **Federal Register** that will announce the final composition of the Committee and the firm date, time, and place of the initial meeting.

VI. Tentative Schedule

At this time, HUD's tentative plan is to hold the first meeting of the Committee on March 23–March 25, 2004. All meetings are expected to start at 8:30 a.m. and run until approximately 5 p.m. unless the Committee agrees otherwise. HUD plans to hold the meetings at the Real Estate Assessment Center, 1280 Maryland Ave, SW., Suite 800, Washington, DC 20024. The purpose of the first meeting will be to orient members to the negotiated rulemaking process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. This meeting will be open to the public. In the event that the date and times of these meetings are changed, HUD will advise the public through **Federal Register** notice.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

VII. Administrative Support

HUD will take steps to ensure that the Committee has the dedicated resources it requires to conduct its work in a timely fashion, consistent with the requirements of the Negotiated Rulemaking Act of 1990.

Dated: January 14, 2004.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–1747 Filed 1–27–04; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Wednesday,
January 28, 2004

Part III

The President

Executive Order 13325—Amendment to Executive Order 12293, the Foreign Service of the United States

Federal Register
Vol. 69, No. 18
Wednesday, January 28, 2004

Presidential Documents

Title 3—

The President

Executive Order 13325 of January 23, 2004

Amendment to Executive Order 12293, the Foreign Service of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Foreign Service Act of 1980, as amended, and in order to adjust the basic salary rates for each class of the Senior Foreign Service in light of the changes made to the manner in which members of the Senior Executive Service will be paid pursuant to the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), it is hereby ordered as follows:

Section 1. Section 4 of Executive Order 12293 of February 23, 1981, as amended, is amended to read as follows:

''**Sec. 4.** (a) In accord with Section 402 of the Act (22 U.S.C. 3962), there are established the following salary classes with titles for the Senior Foreign Service, at the following ranges of basic rates of pay.

(1) Career Minister

Range from 94 percent of the rate payable to level III of the Executive Schedule to 100 percent of the rate payable to level III of the Executive Schedule.

(2) Minister-Counselor

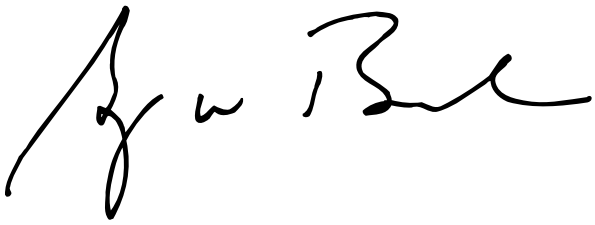
Range from 90 percent of the rate payable to level III of the Executive Schedule to 100 percent of the rate payable to level III of the Executive Schedule.

(3) Counselor

Range from 120 percent of the rate payable to GS–15/Step 1 to 100 percent of rate payable to level III of the Executive Schedule.

(b) Upon conversion to a rate of basic pay within the range of rates established for the applicable salary class by this section as of the first day of the first applicable pay period beginning on or after January 1, 2004, a member of the Senior Foreign Service shall receive the rate of basic pay to which he or she was entitled immediately before that date, including any locality-based comparability payment authorized under 5 U.S.C. 5304(h)(2)(C) that the member was receiving immediately before that date. On the same date, or on a later date specified by the Secretary of State (or the heads of the other agencies that utilize the Foreign Service personnel system (collectively the ''Secretary'')), the Secretary may increase the member's rate of basic pay upon a determination that the member's performance or contribution to the mission of the agency so warrant and that the member is otherwise eligible for such a pay adjustment under Section 402 of the Foreign Service Act.''

Sec. 2. *Effective Date.* The salary rates contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2004.



THE WHITE HOUSE,
January 23, 2004.

[FR Doc. 04–1941
Filed 1–27–04; 8:45 am]
Billing code 3195–01–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 28, 2004

COMMERCE DEPARTMENT

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Fishery conservation and management:

West Coast States and Western Pacific fisheries

Pacific coast groundfish; correction; published 1-28-04

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Essential use allowances allocation; published 1-28-04

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Pennsylvania; published 12-29-03

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Copper (II) hydroxide; published 1-28-04

Formaldehyde, polymer; published 1-28-04

Lactic acid, n-butyl ester, etc.; published 1-28-04

JUSTICE DEPARTMENT

DNA identification system:

DNA Analysis Backlog Elimination Act of 2000; implementation—

Qualifying Federal offenses for purposes of DNA sample collection; DNA sample collection, analysis, and indexing; published 12-29-03

SECURITIES AND EXCHANGE COMMISSION

Securities:

Registered transfer agents; recordkeeping requirements; published 12-29-03

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Information technology value added resellers; published 12-29-03

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Agricultural Marketing Service

Organic producers and marketers; exemption from assessments for market promotion activities; comments due by 2-2-04; published 12-30-03 [FR 03-31945]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

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Gulf of Alaska groundfish; comments due by 2-2-04; published 12-2-03 [FR 03-29940]

COMMERCE DEPARTMENT

Patent and Trademark Office

Trademark cases:

Registrations; amendment and correction requirements; comments due by 2-2-04; published 12-18-03 [FR 03-31094]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Climate change:

Voluntary Greenhouse Gas Reporting Program; general guidelines; comment request and public workshop; comments due by 2-3-04; published 12-5-03 [FR 03-29983]

Worker Safety and Health; chronic beryllium disease prevention programs; comments due by 2-6-04; published 12-8-03 [FR 03-30287]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ozone Air Quality; State and Tribal 8-hour designation recommendations

Agency responses; availability; comments due by 2-6-04; published 12-10-03 [FR 03-30582]

Air quality implementation plans; approval and promulgation; various States:

Kentucky and Indiana; comments due by 2-4-04; published 1-5-04 [FR 04-00011]

Air quality planning purposes; designation of areas:

Alabama; comments due by 2-5-04; published 1-6-04 [FR 04-00211]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Superfund program:

Carbamates and carbamate-related hazardous waste streams and inorganic chemical manufacturing processes waste; reportable quantity adjustments; comments due by 2-2-04; published 12-4-03 [FR 03-30166]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

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Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

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Indian Affairs Bureau

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Airbus; comments due by 2-4-04; published 1-5-04 [FR 04-00051]

BAE Systems (Operations) Ltd.; comments due by 2-4-04; published 1-5-04 [FR 04-00050]

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Dornier; comments due by 2-4-04; published 1-5-04 [FR 04-00049]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 2-4-04; published 1-5-04 [FR 04-00047]

GARMIN International Inc.; comments due by 2-3-04; published 12-30-03 [FR 03-31978]

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Gulfstream Aerospace LP; comments due by 2-6-04; published 1-7-04 [FR 04-00271]

Hamilton Sundstrand Corp.; comments due by 2-2-04; published 12-2-03 [FR 03-29904]

Pratt & Whitney; comments due by 2-2-04; published 12-3-03 [FR 03-30073]

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

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